



WASHOE COUNTY

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CM/ACM	<u>KS</u>
Finance	<u>DN</u>
DA	<u>✓</u>
Risk Mgt.	<u>DE</u>
HR	<u>N/A</u>
Comptroller	<u>MS</u>

STAFF REPORT

BOARD MEETING DATE: December 8, 2015

DATE: December 1, 2015

TO: Board of County Commissioners

FROM: Dwayne Smith, P.E., Division Director, Engineering and Capital Projects
Community Services Department, 328-2043, desmith@washoecounty.us

THROUGH: Dave Solaro, Arch., P.E., Director
Community Services Department, 328-2040, dsolaro@washoecounty.us

SUBJECT: Recommendation to approve an Owner-CMAR Construction Agreement between Washoe County and Q&D Construction, Inc. to provide Construction Manager At Risk (CMAR) construction services for the Washoe County Medical Examiners Facility Project [\$10,770,482.00]; and direct the Comptroller's Office to make the appropriate budget adjustments. (All Commission Districts.)

SUMMARY

The Community Services Department (CSD) is requesting approval of a Construction Manager at Risk (CMAR) Agreement with Q&D Construction, Inc. (Q&D) to provide construction services for a new Washoe County Medical Examiners Facility Project (Project) located at 990 East 9th Street. Funding for the construction of the Project was approved by the Board through the sale of General Obligation (limited tax) Building Bonds (Series 2015) that are additionally secured by pledged revenues.

Q&D was selected through a qualification based selection process as required by Nevada Revised Statute (NRS 338- Public Works). Request for qualifications were publically solicited and through an evaluation and interview process, Q&D was ranked as the most qualified candidate. Under a preconstruction services agreement, Q&D participated in design development phases of the Project and provided input regarding the design, scheduling, value engineering, estimating, constructability reviews, attended associated meetings and presentations, and assisted Washoe County in determining the most efficient and effective process to deliver the Project. Once final design was completed, Q&D solicited construction bids for the Project on October 23, 2015 and provided Washoe County a list of each sub-contractor providing more than 1% of the estimated cost of the Project.

Washoe County and Q&D negotiated a Guaranteed Maximum Price (GMP) for construction in the amount of \$10,770,482 which includes the fixed price for the construction of the Project in an amount of \$9,618,440, construction fees in the amount of \$459,535 and general conditions in the amount of \$593,466. A total of \$99,041 is included in the GMP for CMAR contingencies in the event there are owner directed change orders or unforeseen construction items which were not included in the Project design and specifications.

The design phase of the Project was completed on October 12, 2015 with the Board's approval; construction activities will begin on January 5, 2016 following a ground breaking ceremony on December 15, 2015. The Project is anticipated to take 12 months to complete and Washoe County anticipates accepting the new facility in December 2016 with the Washoe County Medical Examiner staff moving into the new facility during the first part of 2017.

Washoe County Strategic Objective supported by this item: Safe, secure and healthy communities.

PREVIOUS ACTION

January 14, 2014, the Board of County Commissioners (Board) approved an agreement for professional consulting services between Washoe County and Lumos and Associates, Inc. to provide project management services for the Washoe County Medical Examiners Facility Project [\$310,030].

On May 13, 2014, the Board approved the Washoe County Capital Improvement Plan for FY2014/19 which included authorization for the design and construction phase of a new Washoe County Medical Examiners Facility.

On July 1, 2014, Washoe County Purchasing approved a preconstruction services contract with Q&D Construction, Inc., for the Washoe County Medical Examiners Facility Project [\$45,698].

On July 8, 2014, the Board approved an agreement for professional consulting services between Washoe County and VanWoert Bigotti Architects to provide architectural design services for the Washoe County Medical Examiners Facility Project [\$766,990].

On July 22, 2014, the Board approved a resolution directing the Clerk to notify the Washoe County Debt Management Commission of the County's proposal to issue its Washoe County, Nevada General Obligation (limited tax) Building Bonds (additional secured by pledged revenues) in the maximum principal amount of \$12,000,000 for the Medical Examiner's building; providing certain details in connection therewith, and providing the effective date hereof.

On December 9, 2014, the Board approved a Resolution of Intent, proposing the issuance of, and authorizing the publication of notices relating to General Obligation (limited tax) Building Bonds (additional secured by pledged revenues) Series 2015 in the maximum principal amount of \$12,000,000 for the purpose of financing the building projects, including the Medical Examiner's building; providing the manner, form, and contents of the notices thereof; providing other matters properly related thereto; and providing the effective date hereof.

On February 24, 2015, the Board approved Amendment No. 1 to the Agreement for Professional Consulting Services between Washoe County and VanWoert Bigotti Architects to include specialty forensic consultant services for the Washoe County Medical Examiner's Facility Project [\$167,835.00].

On February 24, 2015, the Board approved an Agreement for Professional Consulting Services between Washoe County and Poggemeyer Design Group, Inc., to provide project management services for the Washoe County Medical Examiners Facility Project [\$182,990.00].

BACKGROUND

Washoe County owns and operates the existing Medical Examiners facility located at 10 Kirman Avenue, adjacent to the Renown Medical Center. The single-story building, which has a full basement, also houses the Washoe County Tuberculosis (TB) Clinic. The existing facility was constructed in 1959, commissioned in 1990, renovated in 1992 and expanded in 2003. Over time, the existing facility has become a regional provider to 15 counties in Nevada and several counties in California. In addition to providing medical examiner services, the facility also provides various services including toxicological sampling, testing and reporting for the Washoe County Sheriff's Crime Laboratory. The facility also stores a significant number of various types of samples which require various storage environments.

Understanding the significant operation and maintenance costs of the existing facility, and also its building size and infrastructure deficiencies, Washoe County included planning efforts for a new Medical Examiner's facility within the 2001 Washoe County Facilities Master Plan. That Master Plan identified the need for a new facility and recommended a project be initiated 2013.

Funding for the design and development of the project was approved in the Washoe County 2014/2019 Capital Improvement Plan (CIP). Funding for the construction of the facility was provided through the sale of General Obligation (limited tax) Building Bonds that are additionally secured by pledged revenues.

Design documents were received on October 12, 2015 from the design team. Subsequently, a building permit application was submitted to the City of Reno on October 15, 2015 to allow for approval prior to negotiating the GMP and initiating construction in January 2016 with a groundbreaking ceremony to be held on December 15th. The project has been developed with a 12-month construction schedule and it is anticipated that the new facility will be completed and accepted by Washoe County in January 2017, allowing Washoe County staff to move into the new facility in early 2017.

Q&D is a licensed contractor that specializes in CMAR preconstruction and construction services for public works facilities and has been verified through the System for Award Management, DUNS Number 034960351.

FISCAL IMPACT

The new Medical Examiner Facility project is included in the approved 2015-2019 Capital Improvement Plan and is funded primarily through Washoe County's issuance of General Obligation building bonds. Funding is located in project CF890401 Medical Examiners Building within the Capital Facilities Tax Fund 489.

The total FY2016 budget authority for the project is \$12,177,600 which includes authority for the construction of the Project in the amount of \$10,770,482. Total FY2016 commitments and expenditures to date which include design, project management and CMAR pre-construction services are \$992,525. Total FY2014 and FY2015 expenditures were \$64,561 and \$257,839.

Upon approval, the Comptroller's Office is directed to make the following budget adjustments which reflect the debt issuance and increase in budget authority:

Budget Adjustments

Account	Name	Costing	Amount	Notes
610000	Debt Issued	C890401	(12,000,000.00)	Record New Debt Issued
611000	Bond Premium	C890401	(333,202.00)	Record Bond Premium
791101	Bond Issuance Costs	C890401	323,960.00	Record Bond Issuance Costs
610000	Debt Issued	CF890401	10,609,963.00	Remove Original Budget for Debt
781080	Construction Contracts	CF890401	1,782,212.00	Increase Project Budget
781080	Construction Contracts	CF890401	9,606,692.00	Move Budget to Construction Contracts
781002	Building Improvement Capital	CF890401	(9,606,692.00)	Move Budget to Construction Contracts
481000	Interest Pooled Investment	C890401	(135,000.00)	Record Interest on Proceeds
710149	Investment Pool Alloc Exp	C890401	9,000.00	Record Allocated Interest Expense
813001	Transfer to Debt Service	CF890401	(609,963.00)	Reduce transfer to Debt
813001	Transfer to Debt Service	C890401	194,073.00	Record Transfer to Debt
624089	Transfer Capital Facilities	C450285	415,890.00	Reduce transfer for Debt
792100	Principal	C450285	(225,000.00)	Reduce Principal Payment
792200	Interest Bonds	C450285	(190,890.00)	Reduce Interest Payment
818000	Intrafund Transfer	C890401	12,177,600.00	Bond Funding Transfer to Project
818000	Intrafund Transfer	CF890401	(12,177,600.00)	Bond Funding Transfer to Project
781080	Construction Contracts	C890401	158,957.00	Balance to Capital Facilities Public Safety

RECOMMENDATION

It is recommended the Board of County Commissioners approve an Owner-CMAR Construction Agreement between Washoe County and Q&D Construction, Inc. to provide Construction Manager At Risk (CMAR) construction services for the Washoe County Medical Examiners Facility Project [\$10,770,482]; and direct the Comptroller's Office to make the appropriate budget adjustments.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to approve an Owner-CMAR Construction Agreement between Washoe County and Q&D Construction, Inc. to provide Construction Manager At Risk (CMAR) construction services for the Washoe County Medical Examiners Facility Project [\$10,770,482]; and direct the Comptroller's Office to make the appropriate budget adjustments."



WASHOE COUNTY OWNER-CMAR CONSTRUCTION AGREEMENT

This Owner-CMAR Construction Agreement, between the Washoe County, represented by the listed Owner, hereinafter referred to as "Owner", and the Construction Manager at Risk, *Q & D Construction, Inc.* hereinafter referred to as "CMAR", is entered into as of the following date:

Execution Date: December 8, 2015

Project Identification

Project Name: Washoe County Medical Examiner Facility

Project Address: 990 East Ninth Street, Reno, Nevada

OWNER

Washoe County
Community Services Department
P.O. Box 11130
1001 East 9th Street
Reno, Nevada 89512
Ph: (775) 328-2043/ Email: desmith@washoecounty.us

CMAR

Q&D Construction, Inc.
1050 S. 21st Street
Sparks, Nevada 89431
Ph: (775) 353-7006/ Email: tbast@qdconstruction.com

ARTICLE 1 – GUARANTEED MAXIMUM PRICE (GMP)

For furnishing all labor, materials, equipment, tools and services, and for doing everything required by this Agreement and the other Contract Documents, the Owner will pay and the CMAR shall accept a total sum (Guaranteed Maximum Price) not to exceed:

The CMAR’s Guaranteed Maximum Price (GMP) for the entire Work on the referenced Project:

Cost of the Work <i>(excluding General Conditions)</i>	\$ 9,618,440
CMAR’s General Conditions Cost	\$ 593,466
CMAR Proposed Fee for Construction Services GRAND TOTAL	\$ 459,535
CMAR’s Proposed Fee Percentage (%) x Cost of Applicable Items	4.5%
CMAR’s Contingency	\$99,041
Total Guaranteed Maximum Price (GMP)	\$10,770,482

SAVINGS SPLIT

	<u>Owner</u>	<u>CMAR</u>
Percentage Split of Cost of Work Savings	0%	100% *
Percentage Split of CMAR’s Contingency Savings	0%	100% *
Percentage Split of Owner’s Contingency	100%	0%
Percentage Split of Unused Allowances	100%	0%

*(*Capped at \$74,834, then reverts 100% to Owner)*

ARTICLE 2 – INCORPORATED DOCUMENTS

The Owner and the CMAR mutually agree that the following documents are incorporated into and made a part of this Agreement by reference:

- A. CMAR Interview Submittal
- B. CMAR Fee Proposal
- C. CMAR Request for Proposal Document
- D. CMAR General Conditions of the Contract
- E. Supplemental CMAR General Conditions *(if/when applicable)*
- F. Prevailing Wage Rates for Washoe County Dated: 2015-2016, October 1
- G. Performance and Payment Bonds
- H. Drawings Dated: October 23, 2015
- I. Specifications and Referenced Documents Dated: October 23, 2015
- J. Addenda
- K. Change Orders
- L. Project Geotechnical Engineering Report

ARTICLE 3 – CONTRACT TIME

The CMAR shall commence the work on the Project as directed by the Owner in a written Notice to Proceed. After the referenced date of commencement, all work shall be substantially completed and accepted by the Owner within the number of calendar days stipulated below and as set forth in the Notice to Proceed, after which time, the stipulated liquidated damages provisions shall apply.

Total Calendar Days: 334

ARTICLE 4 – LIQUIDATED DAMAGES

The CMAR agrees that time is of the essence of this Agreement and further agrees to satisfactorily complete the Work in accordance with the contract documents within the specified contract time plus any adjustments to the Contract Time resulting from approved Change Orders, and failing to do so, agrees to pay, not as a penalty, but as liquidated damages, the sum stipulated below for each calendar day in excess of the Contract Time stipulated in this Agreement. Liquidated damages shall cease to be assessed on the date of Substantial Completion provided the CMAR completes all punch-list work within the time limit stipulated and acknowledged in writing by Owner Certificate of Substantial Completion. Liquidated damages shall resume if the CMAR does not complete all punch-list work within the time limit stipulated in the Certificate of Substantial Completion.

Liquidated Damages: \$500 per day

ARTICLE 5 – AGREEMENT MODIFICATIONS

This Agreement constitutes the entire agreement between the parties and may be modified only by a written Change Order executed by the parties.

ARTICLE 6 – AGREEMENT TERMS & CONDITIONS

The term Work includes all labor, materials, services, equipment, tools, transportation, power, water, permanent and temporary utilities, connections, provisions for safety, and all incidental and other things necessary to produce the finished construction as described by the Contract Documents.

The CMAR agrees to provide all labor materials, equipment, tools and services necessary, and to do everything required by this Agreement and by the Contract Documents, as necessary to complete all Work required for the Project within the specified contract time.

ARTICLE 7 – CONTRACT DOCUMENTS

The Contract Documents form the agreement between the Owner and the CMAR. The Contract Documents are complementary and what is required by any one shall be as binding as if required by all.

ARTICLE 8 – EXAMINATION OF DOCUMENTS

Execution of this Agreement by each party shall constitute the representation by each party that they have examined the contents of all contract documents, including the Washoe County General Conditions of the Contract for Construction Manager at Risk

(CMAR General Terms and Conditions) and fulfilled representing the aforementioned, that he/she has read and understands the same, and specifically agrees to be bound thereby.

ARTICLE 9 – FINAL PAYMENT

When the Work and all requirements of the Contract Documents are fully and satisfactorily completed, the Owner will pay to the CMAR a final payment consisting of the remaining unpaid balance of the Contract Sum due the CMAR. The acceptance of the final payment by the CMAR shall constitute a full and final release and waiver of all CMAR claims and rights of claim against the Owner relating or pertaining to the Work.

Acceptance of the final payment by the CMAR shall terminate the Owner-CMAR Construction Agreement after which time the applicable terms and conditions for Warranties and Insurance shall continue to apply.

ARTICLE 10 – STATUTORY REQUIREMENTS

This Agreement shall be construed and interpreted according to the laws of the State of Nevada.

ARTICLE 11 – INFORMATION ACCESS

The books, records, documents, and accounting procedures and practices of the CMAR relevant to this Agreement shall be subject to inspection, examination and audit by the State Public Works Division, The State of Nevada, The State Attorney General, and/or the State Legislative Auditor and the Washoe County Community Services Department.

ARTICLE 12 – ASSIGNMENT

The CMAR shall neither assign, transfer, nor delegate any rights, obligations, monies or duties under this Agreement without the prior written consent of the Owner.

ARTICLE 13 – USE OF DOCUMENTS

Any drawings, reports, studies, photographs, negatives, or other documents prepared by the CMAR in the performance of his obligations under this Agreement shall be the exclusive property of the Owner and all such materials shall be remitted to the Owner by the CMAR upon completion, termination, or cancellation of this Agreement. The CMAR shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the CMAR's obligations under this Agreement, without the prior written consent of the Owner.

ARTICLE 14 – GOVERNING LAW

Nevada law, without giving effect to its conflicts-of-law principles, governs all adversarial proceedings arising out of this Agreement or the Contract Documents or arising out of the CMAR constructing the Washoe County Medical Examiner Facility. The CMAR may bring a legal action only in a state court of Nevada in Washoe County.

ARTICLE 15 – INDEMNIFICATION

The CMAR agrees to indemnify and save and hold the Owner, its agents and employees harmless from any and all claims, causes of action or liability arising from the performance of this Agreement by the CMAR or the CMAR's agents or employees.

The Owner and the CMAR shall each indemnify the other for any losses principally caused by the indemnifying party.

ARTICLE 16 – INDEPENDENT CONTRACTOR

The parties agree that the CMAR is an independent contractor and that this Agreement is entered into in accordance with NRS Section 284.173, which in pertinent part provides that the CMAR is not a Washoe County employee and that the CMAR will not be entitled to any Washoe County insurance or benefits.

ARTICLE 17 – FAIR EMPLOYMENT PRACTICES

In connection with the performance of work under this Agreement, the CMAR agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, disability, or age. Such agreement shall include, but not be limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The CMAR further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. Any violation of such provision by the CMAR shall constitute a material breach of this Agreement.

ARTICLE 18 – INSURANCE PROVISIONS

A Certificate of Liability Insurance evidencing the required coverage, as stipulated in the General Conditions of the Contract, shall be filed with the Owner prior to the CMAR mobilizing onto the project site and prior to commencement of any work on the Project.

OWNER

WASHOE COUNTY

By: _____

Print: _____

Title: _____

Date: _____

CONSTRUCTION MANAGER AT RISK

Q&D CONSTRUCTION, INC.

By: _____

Print: _____

Title: _____

Date: _____



WASHOE COUNTY

GENERAL CONDITIONS OF THE CONTRACT

FOR CONSTRUCTION MANAGER AT RISK (CMAR)

PROJECT: WASHOE COUNTY MEDICAL EXAMINER

FACILITY

PROJECT ADDRESS: EAST NINTH STREET, RENO,

NEVADA

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SECTION 1: DEFINITIONS, RULES AND REGULATIONS

1.1 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part. The Project is identified by name and location in the Owner-CMAR Construction Agreement.

1.2 THE WORK

The term Work includes all labor, materials, services, permits, applications, equipment, tools, transportation, power, water, permanent and temporary utilities, connections, provisions for safety, and all incidental and other things necessary to produce the finished construction as described by the Contract Documents.

1.3 THE OWNER

The Owner is the person or organization identified as such in the Owner-CMAR Construction Agreement. The term Owner means the Owner or his/her authorized representatives.

1.4 THE ARCHITECT

The Architect is the person or organization responsible for the design of the Project and the preparation of the Drawings and Specifications on behalf of the Owner. The term Architect means the Architect or his/her authorized representatives.

1.5 THE CONSTRUCTION MANAGER AT RISK (CMAR)

The CMAR is the person or organization identified as such in the Owner-CMAR Construction Agreement. The term CMAR means the CMAR or his/her authorized representatives.

1.6 SUBCONTRACTOR

A Subcontractor is a person or organization who has a direct contract with the CMAR to perform any of the Work. The term Subcontractor means a Subcontractor or his/her authorized representatives.

1.7 SUB-SUBCONTRACTOR

A Sub-subcontractor is a person or an organization with direct or indirect contract with a Subcontractor to perform any of the Work. The term Sub-subcontractor means a Sub-subcontractor or his/her authorized representatives.

1.8 WRITTEN NOTICE

Written notice shall be deemed to have been duly served when delivered in person to the individual or member of the firm or to an officer of the organization for whom it was intended, or when sent by mail to the last known business address, or when sent by e-mail or facsimile. Minutes of construction progress meetings and/or Requests for Information (RFI) do not constitute written notice.

1.9 CALENDAR DAYS

All references to a 'day' or to 'days' in the Contract Documents shall be understood to mean calendar days unless specifically indicated otherwise. A Calendar Day shall be understood to be any day of the year including weekends and holidays.

1.10 BUILDING OFFICIAL

The Building Official is the Building Official of the Authority Having Jurisdiction (AHJ). Any

changes to the Work that could be construed to have a potential code impact shall be reviewed and approved by the Building Official.

1.11 GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price (GMP) is the maximum cost for the Work as delineated in the Owner-CMAR Construction Agreement and is also referred to as the Contract Sum in various Contract Documents including the CMAR General Conditions of the Contract.

1.12 CMAR'S CONTINGENCY

The CMAR's Contingency is an itemized amount that may be utilized by the CMAR, at his/her discretion, to cover the cost of the Work described in the Contract Documents and/or to cover the cost of the CMAR's General Conditions. Any portion of the CMAR's Contingency that remains when the Work is completed shall be split between the Owner and CMAR in accordance with the percentage values listed in the CMAR GMP Proposal.

1.13 OWNER'S CONTINGENCY

The Owner's Contingency belongs solely to the Owner for the purpose of being allocated towards stipulated additional work (as itemized in an executed Change Order). Any portion of the Owner's Contingency that remains when the Work is completed belongs to the Owner.

1.14 THE CONTRACT

All of the Contract Documents form the Contract. The Contract Documents consist of all of the following:

- Owner – CMAR Construction Agreement
- Owners Division One Requirements
- CMAR General Conditions of the Contract
- Change Orders
- Addenda to Specifications
- Addenda to Drawings
- Specifications
- Drawings
- Project Geotechnical Site Report

1.15 SUBMITTALS AND SHOP DRAWINGS

Submittals and shop drawings are drawings, diagrams, illustrations, performance charts, brochures, samples, and other data which are prepared by the CMAR or any Subcontractor, manufacturer, supplier, or distributor, which illustrate some portion of the Work.

Samples are physical examples furnished by the CMAR to illustrate materials, equipment, finishes, or workmanship, and to establish standards by which the Work will be judged.

1.16 RULES AND REGULATIONS

The CMAR shall comply with all applicable portions of the Nevada Revised Statutes (NRS) (including, but not limited to, NRS Chapter 338).

The CMAR shall comply with NRS Section 338.125 (which pertains primarily to discrimination against employees and applicants because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression or age). A violation of any provision contained in

NRS Section 338.125 shall constitute a material breach of the Contract.

1.17 ALLOWANCES

An allowance is a specific value designated by the Owner for use to accommodate work that could not be identified adequately for bidding purposes in the original construction documents. Any portion of an allowance that remains when the Work is completed belongs to the Owner.

SECTION 2: THE CONTRACT DOCUMENTS

2.1 INTENT AND INTERPRETATION

2.1.1 The Contract Documents are complementary and what is required by any one shall be as binding as if required by all. In the event that the terms, provisions, conditions, specifications, or requirements contained in one contract document should conflict with those contained in another contract document, then such conflict shall be resolved in accordance with the following alpha-order of precedence:

- A. Owner-CMAR Construction Agreement
- B. Owners Division One Requirements
- C. CMAR General Conditions of the Contract
- D. Change Orders
- E. Addenda to Specifications
- F. Addenda to Drawings
- G. Specifications
- H. Drawings
- I. Project Geotechnical Site Report

In the event of an inconsistency between or within any of the Contract Documents or between any of the applicable codes, the more restrictive shall apply and the better quality or greater quantity of work shall be provided, at no additional cost to the Owner with no change to the contract time unless approved through an executed change order.

- 2.1.2 Specifications shall take precedence over notes on drawings. Large scale drawings shall take precedence over smaller scale drawings.
- 2.1.3 The Contract Documents are intended to include and require all items, which are necessary for the proper execution and completion of the Work.
- 2.1.4 Interpretations of the Drawings and Specifications and the intent, which are necessary to the proper execution and completion of the Work, will be made by the Architect and/or Owner. Words, which have well known technical or trade meanings are to be interpreted in accordance with such recognized meanings.
- 2.1.5 The organization of the Specifications into divisions and sections, and the arrangement of the Drawings, shall not be construed to establish controls or limitations on the CMAR with regard to dividing the Work among Subcontractors, or in establishing the extent of work to be performed by any specific trade.

2.2 EXISTING CONDITIONS

- 2.2.1 It is the CMAR's responsibility to ascertain any existing conditions that may affect the cost of the proposed Work, which could have been discovered by reasonable examination of the site.
- 2.2.2 No additional costs shall be allowed to the CMAR for existing conditions, which could have been discovered by reasonable examination of the site.
- 2.2.3 Existing improvements visible at the job site, for which no specific disposition is made in the Contract Documents, but which could reasonably be assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by the CMAR at no additional cost to the Owner, after written notification is given to the Owner.
- 2.2.4 The geotechnical report issued with the Contract Documents is provided for the benefit of the project design and is included as a contract documents for design information only. The Owner does not guarantee the accuracy or completeness of the report and shall not be liable for any additional work or cost arising out of conclusions reached by the CMAR based upon the geotechnical report. The CMAR assumes all responsibility for any conclusions reached by the CMAR based on the geotechnical report.

2.3 REQUESTS FOR INFORMATION (RFI)

- 2.3.1 The CMAR shall, upon discovering any discrepancy, conflict, or inconsistency in the Contract Documents, immediately submit a Request for Information (RFI) to the Owner and Architect. The Architect, upon receipt of any such request, will promptly investigate the circumstances and give appropriate instructions to the CMAR within the specified time, but will take such action only after consultation with the Owner. Until such written instructions are given, any work done by the CMAR, either directly or indirectly relating to such discrepancy, conflict, or inconsistency will be at his/her own risk, and he/she shall bear all costs arising therefrom. The CMAR shall maintain a sequential log of all questions and inquiries (RFIs).
- 2.3.2 No work shall be performed by the CMAR without adequate drawings or specifications, or that is in conflict with or contrary to the Contract Documents. The CMAR shall immediately report to the Owner and the Architect any discrepancy, conflict, or inconsistency that he/she may discover, or should have discovered, in the Contract Documents. If the CMAR performs any work contrary to the Contract Documents, he shall be solely responsible and shall bear all costs attributable thereto.
- 2.3.3 Requests for Information shall be limited to one specific issue or group of related issues and shall not address multiple issues. The Architect will review and respond to complete RFIs within ten (10) working days from the date that the RFI is received by the Architect. RFIs shall be issued by the CMAR to the Architect in a reasonable and orderly sequence such that they are not unreasonably grouped together and then delivered to the Architect. If a RFI is relative to critical path work, the CMAR will identify as such and will request a response from the Owner and Architect which will meet the construction schedule needs and will be submitted in a timely manner, providing sufficient and reasonable review time as mutually agreed upon with the Owner and Architect at the time of submittal.

2.4 CHANGES IN THE WORK

- 2.4.1 A Change Order is an amendment to the Owner-CMAR Construction Agreement and is a written order to the CMAR signed by the Owner and the CMAR, issued after the execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum or the Contract Time.
- 2.4.2 The Owner and the Architect have the authority to order minor changes in the Work, which do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be binding on the CMAR.
- 2.4.3 The CMAR shall not proceed with changes to the Work without a Change Order or a Construction Change Directive. If the CMAR proceeds with changes to the Work without proper written approval, he does so at his own risk.
- 2.4.4 Should any event or circumstance occur that the CMAR believes may constitute a change in the Work entitling the CMAR to an adjustment to the Contract Sum or the Contract Time, the CMAR shall issue written notice and a request for a Change Order to the Owner within seven (7) calendar days of the occurrence of such event or circumstance. Such written notice shall be issued by the CMAR for any event or circumstance that the CMAR knows, or should have known, to have a potential impact on the Work. The request shall describe in detail the related causes and any potential impact to the Work. The CMAR shall also identify any anticipated adjustment to the Contract Sum and/or to the Contract Time as a result of such impact. Failure to submit such written notice and a request within the time stipulated and with the information required by this Section shall constitute a waiver by the CMAR of the right to a Change Order.
- 2.4.5 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:
- A. By unit prices stated in the Contract Documents or as subsequently agreed upon;
 - B. By a lump sum proposal, which is mutually accepted, is properly itemized, and includes the following:
 - 1. Labor, including benefits, payroll taxes, and workers compensation insurance or any other associated labor costs;
 - 2. Materials entering permanently into the Work, including sales tax; and
 - 3. Costs for equipment utilized to perform the Change Order work.
 - C. By a not-to-exceed maximum cost, which is based on the actual cost of time and materials, properly itemized and verified, and includes the following:
 - 1. Labor, including benefits, prevailing wages, payroll taxes, and workers compensation insurance;
 - 2. Materials entering permanently into the Work, including sales tax; and

3. Costs for equipment utilized to perform the Change Order work.

2.4.6 The costs for changes in the Work may be increased to include a fixed mark-up for Subcontractor profit and overhead capped as indicated below, CMAR profit and overhead on Subcontractor work, and profit and overhead on work done by the CMAR's own forces. This fixed mark-up shall not exceed the amounts stipulated below for a single Change Order item, or for any group of related items, and shall be full compensation for the cost of supervision (to include the Project Manager, Project Coordinator, Superintendent, and all other field and office personnel), field office and home office overhead, profit, tools, insurance and bonding, and all other costs or expenses associated with completing the change in the Work. No other costs or expenses, including, but not limited to, direct daily job costs, general conditions, and/or extended overhead will be paid for time extensions incorporated into a Change Order unless otherwise agreed to in writing by the Owner. No fees shall be paid for time extensions.

CHANGE ORDER MARK-UP SCHEDULE	
1. Additive Changes (for the entity performing the Work):	
Total Cost of Change	Allowable Fee
+\$0.01 to +\$4,999.99	15% of the Total Cost
+\$5,000.00 and above	Negotiated with Owner each occurrence
2. Additive Changes (CMAR Markup) Subcontractors Work:	
Total Cost of Change	Allowable Fee
Any amount	Negotiated with Owner each occurrence
3. Deductive Changes:	
Total Credit Cost of Change	Credit Fee to be Applied
+\$0.01 to +\$4,999.99	5% of the total credit cost. Deductive
+\$5,000.00 and above	Negotiated with Owner each occurrence

2.4.7 Execution of a Change Order shall be considered complete and final adjustment of the Contract Sum and the Contract Time and represents complete and final resolution of all matters related to, or arising out of, the Change Order. The CMAR may not reserve the right to make further claims with regard to any executed Change Order. Any attempt by the CMAR to reserve such a right shall be considered invalid and unenforceable.

2.4.8 All requests for changes in the Work shall be submitted to the Owner and the Architect in sufficient detail to allow a complete analysis of all proposed costs. The CMAR shall, upon request by the Owner or the Architect, submit invoices for materials and equipment utilized in Change Order work. Labor rates, including fringe benefits, shall be in conformance with the applicable prevailing wage rates for this Project.

2.4.9 The CMAR shall, upon request by the Owner or the Architect, submit detailed rationale and justification for labor rates utilized in Change Order work.

2.4.10 The CMAR will not be entitled to a Change Order for any work that reasonably could have or should have been identified as necessary during the CMAR's participation in the

design review process as defined in the Owner-CMAR Pre-Construction Agreement. The CMAR and the Owner mutually agree that the Owner shall have the right to issue one or more Change Orders at or near the end of the Project, requiring work to be performed after the expiration of the Contract Time, without negating or affecting the Owner's right to assess any liquidated damages that the Owner may be entitled to. The scope of such Change Orders shall be limited to work that is deemed by the Owner to be incidental in nature and necessary to allow for proper completion of the Project.

2.5 CONSTRUCTION CHANGE DIRECTIVES

- 2.5.1 A Construction Change Directive is a written directive to the CMAR, signed by the Owner and the Architect, which shall serve as formal and binding direction for the CMAR to proceed with a defined change in the Work. The directive may be implemented when deemed necessary as an interim action until a Change Order can be formally assessed and executed. Upon receipt of a Construction Change Directive, the CMAR shall promptly proceed with the directed changes.
- 2.5.2 The Owner, without invalidating the Contract, may order changes in the Work utilizing a Construction Change Directive with the Contract Sum and/or the Contract Time being adjusted as deemed appropriate. The CMAR shall comply with the provisions of Paragraph 2.4.7 in the event that the CMAR believes that a Construction Change Directive has a potential impact on the Contract Time or the Contract Sum.

2.6 CMAR'S USE OF CONTRACT DOCUMENTS

- 2.6.1 Copies of the Contract Documents, which are reasonably necessary for the proper execution, progress, and satisfactory completion of the Work, shall be provided to the CMAR by the Owner. Copies so furnished are not to be used by the CMAR on any other project, and with the exception of one set for the CMAR's records, are to be returned to the Owner at the completion or termination of the Work.

SECTION 3: THE CONTRACT

3.1 GENERAL

- 3.1.1 The Contract Documents form the Contract for construction. The Contract represents the entire and integrated agreement between the Owner and the CMAR and supersedes all prior negotiations, representations or agreements, either written or oral.
- 3.1.2 The Contract shall not be binding on either the Owner or the CMAR until the Owner-CMAR Construction Agreement and the Performance and Payment Bonds and insurance have been properly executed and submitted, and the Owner-CMAR Construction Agreement has been approved and signed by an authorized representative of Washoe County.
- 3.1.3 Execution of the Owner-CMAR Construction Agreement and initialing the General Conditions shall constitute the CMAR's representation that he/she has carefully examined the contents of all Contract Documents that he/she has read and understands the same, and specifically agrees to be bound thereby. Additionally, execution of the Owner-CMAR Construction Agreement by the CMAR shall represent that he/she has

inspected the site, performed a reasonable examination in accordance 2.2.1 and 2.2.2, familiarized him/herself with all local conditions, laws, and regulations under which the Work is to be performed and has correlated this knowledge with the requirements of the Contract Documents.

- 3.1.4 The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and the CMAR; between the Owner and a Subcontractor; or, between any persons or entities other than the Owner and the CMAR. The Architect shall, however, have authority to act on behalf of the Owner, to the extent provided in the Contract Documents.
- 3.1.5 The laws of the State of Nevada and the applicable rules and regulations of its departments, agencies, and institutions shall govern the Project and the Work. Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein, and the Contract shall be read and enforced as though such provision were included therein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be physically amended to make such insertion or correction.
- 3.1.6 The Contract Sum is the sum stated in the Owner-CMAR Construction Agreement and is the total dollar amount payable by the Owner to the CMAR for the complete and approved performance of the Work in strict conformance with the Contract Documents. The Owner's Contingency belongs solely to the Owner for the purpose of being allocated towards stipulated additional work.

3.2 CONTRACT TIME

- 3.2.1 The Contract Time is the period of time, in calendar days, allotted in the Contract Documents for the completion of the Work. A Calendar Day shall be understood to be any day of the year, including weekends and holidays.
- 3.2.2 The date of commencement of the Work is the date established in the Notice to Proceed letter issued by the Owner.
- 3.2.3 The CMAR shall begin the Work on the starting date established in the Notice to Proceed letter. The CMAR shall perform the Work expeditiously with adequate forces and shall complete the Work within the Contract Time.
- 3.2.4 Unless otherwise agreed upon, normal working days are considered to be Monday through Friday, excluding Washoe County observed holidays, between the hours of 7:00 a.m. and 5:00 p.m. If the CMAR desires to work on any weekend day, Washoe County observed holiday, or during any other hours of the day he shall request and obtain the Owner's written approval at least five (5) days in advance of the requested deviation. The Owner reserves the right to change working hours to coordinate with area events and activities and staff availability and will provide notice of any changes to the CMAR no less than five (5) days in advance of the changed schedule.
- 3.2.5 It is expressly understood and agreed that the Contract Time is a reasonable and acceptable time for completion of the Work considering the requirements of the Contract Documents, the type and scope of the Project, and the usual industrial and labor

conditions prevailing in the locality of the Project.

- 3.2.6 It is expressly understood and agreed that the Contract Time includes adequate time to allow for usual weather delays considering the climatic conditions in the area of the Project. No adjustments to the Contract Time will be allowed on the account of weather and during the contract period. The CMAR shall include adequate float or other allowance in his/her construction schedule to accommodate weather conditions that may be associated with weather dependent work.
- 3.2.7 The Contract Sum is based on the Contract Time specified in the Owner-CMAR Construction Agreement and shall not be based on an early completion schedule. No additional compensation shall be granted to the CMAR for delays to an early completion schedule and any such claim is hereby waived.

3.3 CONTRACT TIME EXTENSIONS

- 3.3.1 An extension in the Contract Time for a delay will be allowed only in the case that a full normal working day is lost. Delays will not be allowed for lost partial days or for lost non-working days.
- 3.3.2 All requests by the CMAR for extensions of the Contract Time due to delays to the Work shall be made in writing to the Owner within seven (7) calendar days after the start of the delay. Each request shall describe in detail the event or events causing the delay, any related causes, and any impact to the Work. Failure to submit such requests within the stipulated time and with the information required by this paragraph shall constitute a waiver by the CMAR of his/her right to an extension of the Contract Time based upon this event or issue.
- 3.3.3 If the CMAR is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect, or by any employee of either, by any separate contractor employed by the Owner, or by circumstances that are agreed to be beyond the control the CMAR and his/her Subcontractors and suppliers, the Contract Time may be extended by Change Order, except by fault of the CMAR and his/her subcontractors and/or suppliers, for such reasonable time as the Owner may determine.
- 3.3.4 The CMAR shall not claim or be entitled to any compensation or damages from the Owner because of delay caused by persons other than the Owner, or the Owner's agents and employees, and any entitlement thereto is hereby waived. The CMAR agrees that his/her sole remedy in the event of a delay caused directly by the Owner, or by the Owner's agents and employees, shall be an extension of Contract Time, except where the delay unreasonably interferes with the CMAR's ability to complete the Work within the Contract Time, and:
- A. Is so unreasonable in length as to amount to an abandonment of the Work;
 - B. Is caused by fraud, misrepresentation, concealment, or other bad faith by the Owner;
 - C. Is caused by active interference by the Owner; or

- D. Is caused by a decision made by the Owner to add significant scope or duration to the Work.

The CMAR must submit any request for an extension of Contract Time in strict conformance with Subsection 3.3.2.

- 3.3.5 Should the CMAR request and be allowed cumulative time extensions, which cause the Contract Time to end on a non-working day (on a weekend day or a holiday), the non-working day(s) may, at the Owner's discretion, be added to the Contract Time such that the Contract Time ends on a working day.
- 3.3.6 Extensions to the Contract Time will only be allowed for delays that affect the critical path for completion of the entire Work as identified in the approved construction schedule. There will be no time extensions due to weather.
- 3.3.7 Extensions to the Contract Time will not be allowed for delays, which could have been avoided by the exercise of care, prudence, foresight, and/or diligence by the CMAR, or for delays resulting from correction of work rejected as defective or as failing to conform to the Contract Documents.

3.4 SUBSTANTIAL COMPLETION

- 3.4.1 Substantial Completion is the stage in the progress of the Work, or a designated portion thereof, when construction is sufficiently complete in accordance with the Contract Documents, so that the Owner can occupy and utilize the Work (or portion thereof) for its intended use. The Work will not be considered substantially complete if any of the following conditions exist:
 - A. Any of the Work is incomplete or defective including work identified in the final punch list, which in the opinion of the Owner, would prevent or interfere with occupancy and/or full use of the facility;
 - B. The Project's mechanical systems have not been tested, balanced, and accepted as being fully complete (including commissioning when applicable);
 - C. The Project's electrical and life safety systems have not been tested and accepted as being fully complete (including commissioning when applicable);
 - D. A Certificate of Occupancy has not been issued by the Building Official (either a Temporary/Conditional or a Final/Unconditional Certificate of Occupancy); or
 - E. Final clean-up is not complete.
- 3.4.2 The following procedure shall be used in establishing Substantial Completion of the Work, unless otherwise agreed to in writing:
 - A. When the CMAR determines that the Work, or a portion thereof, which the Owner agrees to accept separately, is substantially complete, the CMAR shall submit written notice thereof to the Owner and the Architect, and shall include a

punch list of all items which remain to be completed or corrected. Failure to include any items on the list does not alter the CMAR's responsibility to complete all of the Work in accordance with the Contract Documents.

- B. Inspections for Substantial Completion may be requested by the CMAR only after the status of completion has been reviewed and assessed by the Owner and the Architect. Upon such review the Owner and/or the Architect will issue a list of any observed deficiencies that affect the issuance of a Certificate of Substantial Completion.
- C. If the Owner and the Architect, on the basis of an on-site inspection, agree that the Work is substantially complete, the Architect may provide the CMAR with a list of additional corrective items which shall be added to the CMAR's and the Owner's punch lists.
- D. If the Owner and the Architect, on the basis of an on-site inspection, determine that the Work is not substantially complete, the Architect will notify the CMAR in writing, and will provide a list of observed deficiencies. The CMAR shall remedy the deficiencies and submit another written request for Substantial Completion.
- E. When the Owner and the Architect determine that the Work is substantially complete, the Owner will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion, state the responsibilities of the Owner and the CMAR for maintenance, heat, utilities, and insurance, and fix the time within which the CMAR shall complete the punch list items that are attached to the Certificate of Substantial Completion.
- F. The Certificate of Substantial Completion, when signed by the Owner and the CMAR, shall serve to document the CMAR's acceptance of the responsibilities assigned to him in such Certificate.

3.4.3 No payment, nor any use or occupancy of the Project, or any portion thereof, by the Owner, shall constitute acceptance of any work that is not completed in accordance with the Contract Documents, nor shall it relieve the CMAR of full responsibility for correcting defective work or materials found at any time prior to completion of the entire Project or during the warranty period.

3.5 FINAL COMPLETION

- 3.5.1 When the CMAR considers the Work fully completed, he/she shall submit written notice to The Owner and the Architect confirming all of the following:
- A. The Work has been fully completed in accordance with the Contract Documents and is ready for final inspection; and
 - B. All punch list items have been corrected or completed; and
 - C. All equipment and systems have been tested, adjusted, and balanced and are fully

operational; and

- D. All training required by the Contract Documents has been provided; and
- E. All operation and maintenance manuals and as-built drawings have been submitted to the Architect in accordance with the Contract Documents and have been accepted as being complete; and
- F. All surety releases required by the Contract Documents have been submitted to the Owner.

3.5.2 The Owner, with the Architect, will perform a final inspection of the Work. If the Work is found to be incomplete or defective, the CMAR will be notified in writing and provided with a list of observed deficiencies. The Owner may withhold such payment as deemed appropriate to ensure the correction of the deficiencies. Should the CMAR fail to promptly correct the deficiencies noted in the final punch list, the Owner may, upon seven (7) day written notice to the CMAR, hire another contractor to correct such deficiencies, and reduce the portion of the CMAR's contract value, notify the CMAR's Surety, and/or otherwise complete or correct the listed deficiencies, at the CMAR's expense.

3.5.3 When the Work and all requirements of the Contract Documents are fully and satisfactorily completed, the Owner will pay to the CMAR a final payment consisting of the remaining unpaid balance of the Contract Sum due the CMAR. The acceptance of the final payment by the CMAR shall constitute a full and final release and waiver of all CMAR claims and rights of claim against the Owner relating or pertaining to the Work.

3.6 WARRANTY REQUIREMENTS

3.6.1 The CMAR and his/her Surety shall unconditionally guarantee all workmanship and materials incorporated in the Work to be and remain free of defects for a period of one year from the date of the CMAR acceptance and final payment for the work, or for such longer periods as stipulated in the Contract Documents.

3.6.2 When the Work, or a portion thereof, is accepted as being substantially complete, the warranty period will commence on the date of the Certificate of Substantial Completion for the completed portion of the Work.

3.6.3 The CMAR shall perform all service and maintenance on any equipment that is operated prior to the date of the Certificate of Substantial Completion. Such service and maintenance shall be performed in accordance with the equipment manufacturer's written instructions, and as required to maintain the equipment warranty.

3.6.4 Within the one (1) year warranty period, and for such longer periods as specified in the Contract Documents, the CMAR and/or his/her Surety shall promptly remedy any defects in the Work, and pay for any damage to other work resulting therefrom. The Owner shall promptly notify the CMAR in writing of any observed defects. The CMAR shall ensure that the corrective work is commenced within seven (7) days of

such notice and completed in an expeditious and timely manner.

- 3.6.5 The obligations of the CMAR herein shall be in addition to and not in limitation of any obligation imposed by law.
- 3.6.6 Prior to the end of the one year warranty period (approximately eleven (11) months after the date of the Certificate of Substantial Completion, on a date scheduled by the Owner) the CMAR and all requested Subcontractors shall attend a warranty inspection. The CMAR shall take immediate action to remedy, at no cost to the Owner, all warranty items identified during the warranty inspection.
- 3.6.7 All HVAC components, piping, wiring, controls and other associated components, or equipment necessary for operation as designed and constructed, shall be unconditionally guaranteed for all workmanship and materials incorporated into the Work, to be and remain free of defects for a period of two (2) years from the date of the CMAR acceptance and final payment for the work.

3.7 LIQUIDATED DAMAGES

- 3.7.1 It is hereby mutually understood and agreed, by and between the CMAR and the Owner, that the Contract Time, as specified in the Contract, is an essential condition of the Contract. It is further mutually understood and agreed that both the Work and the Contract Time shall commence on the starting date established in the Notice to Proceed letter.
- 3.7.2 The CMAR agrees that all of the Work shall be prosecuted regularly, diligently, and without interruption at a rate of progress that will ensure completion of the Work within the Contract Time.
- 3.7.3 If the CMAR shall neglect, fail, or refuse to achieve Substantial Completion of the Work within the Contract Time, then the CMAR and his/her Surety do hereby agree, as part of the consideration for the Contract, to pay to the Owner, not as a penalty, but as liquidated damages, the amount of money specified in the Owner-CMAR Construction Agreement for each and every excess calendar day that is required to achieve Substantial Completion of the Work. The specified liquidated damages shall be the Owner's sole and exclusive remedy for excess calendar days. The CMAR agrees to and hereby waives any defense as to the validity or enforceability of any liquidated damages payable by the CMAR under the Contract on the grounds that such damages are a penalty or that such damages are disproportionate to the actual damages sustained by the Owner.
- 3.7.4 The CMAR and the Owner mutually agree that in the event of a delay the actual damages to be suffered by the Owner are difficult to determine and accurately quantify. Accordingly, the CMAR, his/her Surety, and the Owner agree that the amount specified in the Owner-CMAR Construction Agreement for liquidated damages is the appropriate and best estimate of the damages that would actually be incurred by the Owner should the Work not be completed within the Contract Time.
- 3.7.5 Should the remaining balance of the Contract Sum be insufficient to cover the specified liquidated damages due the Owner, then the Owner shall have the right to recover such damages from the CMAR and/or his/her Surety.

3.7.6 Liquidated damages shall cease to be assessed on the date that Substantial Completion is achieved provided the CMAR completes all punch list work within the time limit stipulated in the Certificate of Substantial Completion. If the CMAR does not complete all of the punch list work within the time limit stipulated in the Certificate of Substantial Completion, the assessment of liquidated damages shall resume on the date that the stipulated time limit expires and shall continue until all such punch list work is completed.

3.8 CLAIMS FOR DAMAGES

3.8.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his/her employees, agents, or others for whose acts he is legally liable, claim shall be made in writing to such other party within seven (7) days after the first knowledge of such injury or damage.

3.8.2 Any costs to the Owner caused by defective or ill-timed work performed by the CMAR shall be paid by the CMAR.

3.8.3 Except for damages mutually agreed upon by the Owner and the CMAR as liquidated damages in accordance with Section 3.7 and excluding losses covered by insurance that is required by the Contract; the Owner and the CMAR agree to mutually waive all claims against each other for any consequential damages suffered or incurred by the other party that arise from or relate to the Contract, including, without limitation, rental expenses or other damages resulting from a loss of use or availability of the Work, lost income, lost profit, lost financing or opportunity, lost business or reputation, principle office expenses, and loss of management or employee availability, productivity, opportunity, or services.

3.8.4 The provisions of this Section (Section 3.8: Claims for Damages) shall also apply to termination of the Contract and shall survive such termination. The CMAR shall require similar waivers in all contracts with his/her Subcontractors and others retained on the Project.

3.9 DISPUTE RESOLUTION

3.9.1 Except as provided in Subsection 3.9.1(A) any controversy or claim arising out of or related to the Contract Documents or the Work shall be subject to all provisions of this Section 3.9 (Dispute Resolution).

A. The provisions of Subsections 3.9.1 through 3.9.7 do not apply if the Owner has given notice to the Surety under Section 3(A) of the Performance Bond. If the Owner discovers construction defects after the warranty period has expired, the Owner has the right to file an action in a state court of Nevada. When the CMAR accepts final payment pursuant to Section 7.3 he waives all rights under this Section (3.9).

3.9.2 Unless otherwise agreed to in writing, the CMAR shall continue the Work and maintain the construction schedule of the Work during any dispute resolution proceedings. If the CMAR continues to perform in accordance with the Contract Documents, the Owner shall continue to make payments in accordance with the Contract

Documents.

- 3.9.3 In the event that a claim, dispute, or controversy arises between the parties, which is related to the Contract Documents or the Work, the party asserting the claim, dispute, or controversy must provide written notice (Notice of Dispute) to the other party within thirty (30) days of its occurrence. The written notice shall set forth with specificity the nature of the claim or controversy, the relief sought, any other pertinent matters relating thereto, and shall comply with Section 1.8 (Written Notice) of these General Conditions. Notice from the CMAR to the Owner shall be addressed to the Director of the Community Services Department (“Administrator”). Failure of either party to provide proper notice as required herein shall forever bar that party from any remedy thereon, including seeking any dispute resolution and/or judicial action. The notice and time requirements set forth herein shall not apply to warranty claims or construction defect claims that the Owner may have against the CMAR.
- 3.9.4 Upon receipt of a Notice of Dispute, the Administrator shall within five (5) business days direct the Owner to engage in good faith direct negotiations with the CMAR’s principal field personnel, including but not limited to the CMAR’s Superintendent and Project Manager. If the Owner initiates the Notice of Dispute, the direct discussions must take place within five (5) days of the date of the Notice of Dispute. If the Owner and CMAR representatives are not able to reach a resolution, the Administrator shall immediately inform the CMAR’s Principal in writing that resolution was not achieved and arrange for a meeting with the CMAR’s Principal. Upon receipt of such notice, the CMAR’s Principal must meet with the Administrator within five (5) business days, or as otherwise agreed to, and engage in good faith negotiations in an effort to reach a resolution.
- 3.9.5 If the dispute remains unresolved after twenty (20) days from the date of the initial meeting between the CMAR’s Principal and the Administrator, either Party may declare the dispute resolution at an impasse by sending a written notice (Notice of Dispute Resolution Impasse) to the other Party in compliance with Section 1.8 (Written Notice) of these General Conditions.
- 3.9.6 Mediation shall be the first step in the Dispute Resolution Impasse procedure. Within five (5) business days of the receipt of the Notice of Dispute Resolution Impasse, the Parties must choose a mediator by mutual agreement or initiate the services of the American Arbitration Association (AAA), in accordance with its Construction Industry Mediation Rules, in order to elicit the services of a mediator who is agreeable with both Parties. The Parties recognize the need to have minimal delay in the dispute resolution process and commit to scheduling mediation sessions as soon as practicable after impasse is declared. Agreements reached in formal mediation shall be enforceable as settlement agreements in any court of competent jurisdiction. The fees and expenses of the formal mediation shall be shared equally by all Parties. Each Party shall be responsible for their own costs, expenses, consultant fees, and attorney fees incurred in the presentation or defense of any claim, dispute, or controversy that is brought before the mediator. If, after mediation session(s) the Parties are not able to reach resolution, either Party may demand to take those issues to binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.
- 3.9.7 Upon a demand by either Party for binding arbitration after mediation, the Parties may

choose an arbitrator by mutual agreement or utilize the services of AAA, according to its Construction Industry Arbitration Rules, in order to elicit the services of an arbitrator who is agreeable with both Parties. The Parties recognize the need to have minimal delay in the dispute resolution process and commit to schedule the hearing with an arbitrator as soon as practicable after the demand for binding arbitration is received. The fees and expenses for arbitration shall be shared equally by all Parties. Each Party shall be responsible for their own costs, expenses, consultant fees, and attorney fees incurred in the presentation or defense of any claim, dispute, or controversy that is brought to arbitration. The arbitrator's award shall be final and binding and only reviewable according to the provisions of the Uniform Arbitration Act of 2000, codified in Chapter 38 of the NRS.

3.10 TERMINATION BY THE CMAR

3.10.1 The CMAR may, upon seven (7) days written notice, terminate the Contract after the Work is stopped for a period of 60 consecutive days through no act or fault of the CMAR, of a Subcontractor, or their employees or agents; or due to issuance of a court order or other order from a public authority having jurisdiction. If the CMAR terminates the Contract under the terms of this paragraph, he may recover from the Owner payment for work completed and approved, including reasonable overhead, profit, and termination costs. The CMAR will not be entitled to overhead and profit on any unperformed work.

3.11 TERMINATION BY THE OWNER

3.11.1 If any one of the following occurs, then the Owner may, without prejudice to any other right or remedy, and after giving the CMAR and his/her Surety seven (7) days written notice, terminate the employment of the CMAR:

- A. The CMAR is adjudged bankrupt; or
- B. The CMAR makes a general assignment for the benefit of his/her creditors; or
- C. A receiver is appointed on account of the CMAR's insolvency; or
- D. The CMAR persistently or repeatedly refuses or fails to supply an adequate number of properly skilled workmen, proper supervision, or proper materials; or
- E. The CMAR fails to make prompt payment to Subcontractors or to materials suppliers for materials or labor; or
- F. The CMAR disregards any law, ordinance, rule, regulation, or order of any Public authority having jurisdiction.
- G. The CMAR otherwise breaches the Contract.

3.11.2 Upon termination by the Owner, the Owner may take possession of the site and of all materials, equipment, tools, and machinery thereon owned by the CMAR and may finish the Work utilizing whatever means and methods the Owner deems appropriate.

- A. Should the Owner terminate the Contract for any of the aforementioned reasons,

the CMAR shall not be entitled to receive any further payment until the entire Work is fully complete and the actual amount due the CMAR can be properly determined.

B. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for any additional professional services, such excess shall be paid to the CMAR. If such costs exceed the unpaid balance, the CMAR or his/her Surety shall promptly pay the difference to the Owner.

3.11.3 The Owner expressly reserves the right to terminate the Contract at any time due to a national emergency, court injunction, or for any reason determined to be in the best interest of Washoe County, by giving the CMAR and his/her Surety seven (7) days written notice. The CMAR shall be paid for work completed and approved, including reasonable overhead, profit, and termination costs. The CMAR will not be entitled to overhead and profit on any unperformed work.

3.12 SEPARATE CONTRACTS

3.12.1 The Owner reserves the right to award other separate contracts in connection with other portions of the Project.

3.12.2 The CMAR shall afford the Owner's separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly interface and coordinate his/her work with theirs. There should be no expectation by the CMAR that no other Contractor may occupy or perform work on the site but that under all circumstances the Owner will inform the CMAR.

3.12.3 If any part of the CMAR's work depends on the proper execution of the work of any separate contractor, the CMAR shall inspect and promptly report to the Owner and the Architect in writing any discrepancies or defects in such other work. Failure of the CMAR to so inspect and report shall constitute an acceptance of the separate contractor's work as fit and proper to receive his/her work, except as to defects which may develop in the other separate contractor's work after the execution of the CMAR's work.

3.12.4 The CMAR shall do all cutting, fitting, and patching of the Work that may be required to accommodate and incorporate the work of any separate contractor, as shown upon or as reasonably implied by the Contract Documents. The CMAR shall not endanger or alter the work of any separate contractor.

3.12.5 Should the CMAR cause damage to the work or property of any separate contractor on the Project, the CMAR shall, upon written notice, settle with the separate contractor. If any separate contractor asserts any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the CMAR, who shall indemnify, hold harmless, and defend the Owner against any such claim.

3.12.6 If a dispute arises between the CMAR and a separate contractor as to their responsibility for any costs or damages to the Project, the Owner may assign and charge such costs or damages to the CMAR and/or the separate contractor as the Owner, in his/her sole discretion, determines to be appropriate.

3.13 ASSIGNMENT

3.13.1 The CMAR binds himself and each of his/her partners, successors, assigns and legal representatives to the Owner and to the Owner's partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents. He shall not assign or sublet the Contract, in whole or in part, without the written consent of the Owner, nor shall the CMAR assign any monies due or to become due to him hereunder, without the prior written consent of the Owner.

3.14 SEVERABILITY

3.14.1 The Contract and the various provisions thereof are severable. Should any part, clause, provisions or terms be declared invalid, ineffective, or unenforceable, the remaining provisions of the Contract shall remain in full legal force and effect.

3.15 INDEMNIFICATION

3.15.1 To the fullest extent permitted by law, the CMAR shall defend, indemnify, and hold harmless the Owner, the Architect, the Architect's consultants, and the agents and employees of any of them from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) caused by the negligent acts or omissions of the CMAR, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

3.15.2 The Owner and the CMAR shall each indemnify the other for any losses principally caused by the indemnifying party.

3.15.3 In any and all claims against the Owner or the Architect or any of their officers, agents, or employees by any employee of the CMAR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CMAR or any Subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts.

3.15.4 Obligations of the CMAR hereunder shall not extend to the liability of the Architect, his/her agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or the giving of or the failure to give directions or instructions by the Architect, his/her agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

3.15.5 Obligations of the CMAR hereunder shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist pertaining to a party or person described herein. This indemnification obligation shall not be diminished or limited in any way by the limits of insurance required in this Contract or otherwise available to the CMAR or Subcontractors.

3.15.6 All indemnification obligations of the CMAR shall survive final payment.

3.16 COMPLIANCE WITH NRS SECTION 338.0117

3.16.1 The CMAR shall comply with all of the requirements listed herein for the duration of the Project as attested to by the CMAR in his/her "Affidavit of Compliance". The CMAR shall submit a report substantiating his/her successful compliance with each listed requirement prior to submitting his/her final progress payment application:

- A. At least fifty percent (50%) of all workers collectively employed by the CMAR, including any of those workers employed by his/her Subcontractors, will hold a valid driver's license or identification card issued by the Nevada Department of Motor Vehicles; and
- B. All vehicles used primarily for the Project will be registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to NRS Section 706.826; or will be registered in the State of Nevada; and
- C. The CMAR and all of his/her subcontractors will maintain and make available for inspection within this State all payroll records relating to this Project.

3.16.2 In the event that the CMAR cannot meet the requirements of Subsection 3.16.1; the CMAR must provide Written Notice to the Owner within seven (7) days of the CMAR's discovery of that fact and include a detailed explanation of why the requirements of Subsection 3.16.1 cannot be met.

3.16.3 If the CMAR causes a material breach of the Contract as a result of a failure to comply with the requirements of Subsection 3.16.2 the CMAR is liable to the Owner for a penalty in the amount of one percent (1%) of the Contract Sum.

3.16.4 All contracts between the CMAR and a subcontractor or supplier and each contract between a subcontractor and a sub-subcontractor or supplier must provide that:

- A. If a party to a contract causes a material breach of the Contract between the CMAR and The Owner as a result of a failure to comply with the requirements of Subsection 3.16.2, the party is liable to the Owner for a penalty in the amount of one percent (1%) of the cost of the largest contract to which he/she is a party; and
- B. The right to recover the amount determined pursuant to Subsection 3.16.5(A) by the Owner may be enforced by the Owner directly against the party that causes the material breach; and
- C. No other party is liable to the Owner for a penalty as set forth in this Section (Section 3.16).

3.17 CMAR BIDDING PROCEDURES

3.17.1 Owner Oversight of CMAR Bidding Procedures

- A. The CMAR shall coordinate with, document, and disclose to the Owner all qualification, bidding, and contracting procedures utilized in assessing, negotiating with, and contracting with subcontractors as required by NRS Sections 338.16991 and 338.16995, by Nevada Administrative Code (NAC) Chapter 338, and by the Contract Documents.
- B. The CMAR shall coordinate all bid openings with the Owner and the Owner shall attend all bid openings.
- C. The CMAR shall obtain a minimum of three (3) bids on all items of work unless a lesser number of bids is deemed acceptable and is pre-approved by the Owner in writing.
- D. If the CMAR has pre-qualified at least three (3) subcontractors for a particular trade and then receives less than three (3) bids the CMAR shall not open the associated bids until the CMAR obtains written direction from the Owner regarding how to proceed.
- E. Immediately following opening subcontractor bids the CMAR shall provide the Owner with copies of all subcontractor bids along with a list of all subcontractors that submitted bids. This list shall include at minimum the contact information for the subcontractor, the associated trade, any exclusions, any stipulations, and the bid amount.
- F. The CMAR shall demonstrate to the satisfaction of the Owner that he has adequate previous experience on any work that he intends to self-perform and shall also provide evidence that his/her proposed cost for such work is lower than the other bids received for that work.

3.17.2 CMAR Pre-Qualification of Subcontractors

- A. The CMAR shall pre-qualify all subcontractors whose scope of work is more than one percent (1%) of the total estimated cost of construction in compliance with all requirements of NRS Sections 338.16991 and 338.16995, NAC Chapter 338, and with all provisions of General Conditions Section 3.17. When pre-qualifying a subcontractor the CMAR shall consider and utilize only the criteria listed in NRS Section 338.16991 and NAC Chapter 338.
- B. All subcontractors, regardless of the value of their portion of the work, shall have and maintain a State of Nevada Contractor's license in good standing for the entire duration of the Work, and must not be disqualified by the State Public Works Division pursuant to NRS Section 338.1376.
- C. Prior to advertisement for subcontractor qualifications the CMAR shall provide the Owner with a copy of the subcontractor pre-qualification application for

review and approval.

- D. The CMAR shall maintain a record of all documents generated and received in connection with the pre-qualification of subcontractors.
- E. The CMAR shall pre-qualify at least three (3) subcontractors for each category of work unless the Owner issues written authorization to pre-qualify less than three (3) subcontractors for a specific scope of work.

3.17.3 CMAR Requests for Subcontractor Proposals

- A. The CMAR's requests for proposals from subcontractors whose scope of work is more than one percent (1%) of the total estimated cost of construction shall comply with all requirements of NRS Sections 338.16991 and 338.16995, NAC Chapter 338, and with all provisions of General Conditions Section.
- B. The CMAR shall provide the Owner with a copy of the CMAR's request for subcontractor proposals along with all associated instructions for review prior to issuing the request to subcontractors.
- C. Prior to opening any subcontractor bid, the CMAR shall confirm the following:
 - 1. The subcontractor is pre-qualified for the trade and/or scope of work that the proposal applies to; and
 - 2. The pre-proposal meeting is optional and not a project requirement.

SECTION 4: THE OWNER

4.1 OWNER'S RESPONSIBILITIES

- 4.1.1 The Owner will provide general administration of the Contract, including performance of the functions described in this Section (Section 4: The Owner). Such general administration shall not relieve the CMAR of complete responsibility for the means and methods of construction and performance of the Work in accordance with the Contract Documents.
- 4.1.2 The Owner shall furnish site surveys describing the topography and physical characteristics, legal limits, and utility locations for the Project site.
- 4.1.3 Except for permits and fees, which are the responsibility of the CMAR under the Contract Documents, the Owner shall secure and pay for all costs associated with plan Checking, Building permits, easements and utility connection fees for permanent structures or for permanent changes in existing facilities.
- 4.1.4 Information or services under the Owner's control shall be furnished by the Owner within a reasonable time to avoid delays in the orderly progress of the Work.
- 4.1.5 Prior to the start of construction, the Owner shall obtain all land and rights-of-way

necessary for the carrying out and completion of the Work.

- 4.1.6 In case of termination of the employment of the Architect, the Owner shall appoint a replacement whose status under the Contract Documents shall be that of the former Architect.
- 4.1.7 The Owner will issue the Notice to Proceed and Certificate of Substantial Completion.
- 4.1.8 The foregoing are in addition to other duties, responsibilities, and rights of the Owner enumerated throughout the Contract Documents.

4.2 OWNER'S AUTHORITY

- 4.2.1 The Owner and his representatives shall have access to the Work at all times. The CMAR shall provide proper equipment and facilities for such access and inspection. If any work is required to be tested or approved, the CMAR shall give the Owner timely notice of its readiness for inspection. Neither the observations of the Owner or the Architect in the general administration of the Contract, nor any inspections, tests, or approvals shall relieve the CMAR from his/her obligation to perform the Work in accordance with the Contract Documents.
- 4.2.2 If the Owner or the Architect determine that the CMAR has proceeded with work that does not comply with the Contract Documents, then the CMAR shall be required to correct such work at the expense of the CMAR.
- 4.2.3 The Owner will not be responsible for the acts or omissions of the CMAR or any Subcontractor, or any of their agents or employees, or any other persons performing any of the Work.
- 4.2.4 If the CMAR defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after seven (7) days written notice to the CMAR, and without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the CMAR the cost of correcting such deficiencies, including the cost of the additional professional services made necessary by such default, neglect, or failure. If the payments then or thereafter due the CMAR are not sufficient to cover such amount, the CMAR shall immediately pay the difference to the Owner.
- 4.2.5 If the CMAR fails to carry out the Work in accordance with the Contract Documents or fails to correct work which is not in accordance with the Contract Documents, the Owner, by written notice, may order the CMAR to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The CMAR shall not be entitled to any compensation or to any additional time for such work stoppage.

4.3 INSPECTION BY THE OWNER

- 4.3.1 The Washoe County's Construction Project Manager or Assistant Project Manager has authority to enforce compliance with the Contract Documents and to direct the CMAR to correct non-complying work. The Architect will render interpretations of the

Drawings and Specifications as may be necessary to assist the Project Manager or Assistant Project Manager with proper assessment of non-complying work.

- 4.3.2 The Washoe County's Project Manager or Assistant Project Manager may direct the CMAR to stop any unsafe work, any non-complying work, and/or any work that presents a life-safety concern. The CMAR shall not be entitled to any compensation or to any additional time for such work stoppage a compensation to remedy the condition.
- 4.3.3 Once the CMAR is advised of non-complying work, proceeding with that work or with any related work shall be at the CMAR's risk and at the CMAR's expense.
- 4.3.4 The CMAR shall provide Washoe County's Project Manager or Assistant Project Manager with a minimum 24 hour written notice of all inspections required to be performed by Washoe County. The CMAR shall be responsible for scheduling all testing inspections with the Engineering testing firm doing the testing work, as well as all inspections required by the Authority having jurisdiction for building permit required inspections.
- 4.3.5 The CMAR will be charged for extra inspection services when any work requiring inspection is performed during time periods other than the normal workday (i.e., during nights, weekends, and holidays). The charges shall be based on the current rate of pay for Washoe County Personnel, including any applicable travel and per diem expenses. Charges for extra inspection services outside of normal working hours will be processed as deductive changes to the Contract Sum. The necessity for extra inspection services outside of normal working hours will be determined by the Owner.
- 4.3.6 The Owner and his/her authorized representatives shall be permitted to inspect the Work, materials, payroll records, personnel records, invoices for materials, and other relevant data of the CMAR and Subcontractors. Such inspection by the Owner or his/her authorized representatives shall not be considered a warranty as to the fitness or acceptability of the Work, materials, payrolls, records of personnel, invoices for materials and other relevant data and work, and shall not relieve the CMAR or his/her Subcontractors of their obligations or duties required by the Contract Documents.

SECTION 5: THE CONSTRUCTION MANAGER AT RISK (CMAR)

5.1 GENERAL

- 5.1.1 The CMAR shall carefully study and compare all parts of the Contract Documents with each other and with all information furnished by the Owner and shall immediately report any discrepancies, conflicts, or inconsistencies that he discovers in writing to the Owner and the Architect.
- 5.1.2 The CMAR shall not be liable to the Owner and/or the Architect for any damages resulting from discrepancies, conflicts, or inconsistencies in the Contract Documents unless the CMAR recognized, or should have recognized, such discrepancies, conflicts, or inconsistencies and failed to report them to the Owner and the Architect. No mobilization shall commence and no work shall be performed until all required insurance certificates have been provided to the Owner.

- 5.1.3 If the CMAR performs any work knowing that it involves a recognized discrepancy, conflict, or inconsistency in the Contract Documents, without specific notice to the Owner and the Architect, the CMAR shall assume all responsibility for such performance, including but not limited to, any and all costs for correction.
- 5.1.4 The CMAR shall submit cost proposals, progress schedules, payrolls, reports, estimates, records, and other data as the Owner or Architect may request concerning work performed, or to be performed under the Contract.

5.2 CMAR'S RESPONSIBILITIES

- 5.2.1 The CMAR shall perform and complete the Work in a timely and workmanlike manner and in strict conformance with the Contract Documents.
- 5.2.2 The CMAR shall prepare and submit daily reports to the Owner and the Architect within two (2) days of the reported day. Reports shall include workers on site, work performed, weather conditions, material and equipment deliveries, outstanding issues, and pending RFIs.
- 5.2.3 The CMAR shall supervise and direct all portions of the Work. He shall be solely responsible for all construction procedures, methods, techniques, sequences, and safety, and for coordinating all portions of the Work to comply with the Contract Documents. He shall be responsible for the acts and omissions of his/her employees and Subcontractors, their agents and employees, and all other persons performing any of the Work.
- 5.2.4 The CMAR and each Subcontractor shall have and maintain a State of Nevada Contractor's license in good standing for the entire duration of the Work.
- 5.2.5 The CMAR shall at all times enforce good discipline and order among his/her employees and Subcontractors and shall, at his/her own cost, provide the security necessary to adequately protect the Work.
- 5.2.6 The CMAR shall at all times, and at his/her own cost, safely guard and protect the Owner's property, the Work, and all property adjacent to the Project, from damage, injury, or loss in connection with the Project and shall replace or make good any such damage, injury, or loss. The CMAR shall be responsible for the protection of adjacent property and the maintenance of passageways, guard fences, and other protective facilities.
- 5.2.7 The CMAR shall give all notices and shall comply with all laws, ordinances, rules, orders, and regulations of all public authorities, relating to the performance of the Work.
- 5.2.8 In the event of a temporary suspension of the Work, and/or during inclement weather, the CMAR shall protect, and shall cause his/her Subcontractors to protect the Work and materials against damage, injury, or loss. If any work or materials become damaged, injured, or lost due to any cause, such work and materials shall be removed and replaced at the expense of the CMAR.
- 5.2.9 It shall be the CMAR's responsibility to ensure that all construction loading of the

structural decks complies with the metal deck manufacturer's allowable loading criteria. The storage of materials and the use of mechanical lifts or other heavy moveable or stationary equipment utilized on elevated concrete slabs to perform work shall be conducted in a safe manner so as to not cause any damage or deformation to steel decks or other portions of the structure. The CMAR shall take all necessary precautions, including hiring a structural engineer when necessary to evaluate the imposed loadings on elevated slabs from materials, manpower, lifts, and equipment, in order to comply with the deck manufacturer's safe loading criteria and deflection limitations. The CMAR shall be fully responsible for any damage caused to elevated slabs or other portions of the Work as a result of construction-imposed loads utilized in performing the Work. The CMAR shall include adequate provisions in his/her bid to accommodate any limitations, restrictions, or additional costs that are necessary to meet the deck manufacturer's requirements for the metal deck type, spans, and materials specified in the bid documents. The CMAR shall not be entitled to an increase in the Contract Sum or an extension to the Contract Time for complying with any of the requirements of this Section (Section 5.2).

5.2.10 The CMAR shall ensure that all ductwork either stored on site or installed in the building is thoroughly sealed to protect against dirt and moisture until such time that the building is deemed by the Owner to be adequately clean to allow for start-up of the associated air handling equipment. Should ductwork not be sealed as specified, then the CMAR shall have such ductwork professionally cleaned to an as-new condition at no cost to the Owner.

5.3 SUPERINTENDENT

5.3.1 The CMAR shall employ a competent full-time superintendent and necessary assistants who shall be in attendance at the Project site throughout the progress of the Work. The superintendent and assistants shall be satisfactory to the Owner, and shall not be changed except with the written consent of the Owner. The superintendent shall represent the CMAR and have full authority to act on his/her behalf.

5.4 LABOR AND MATERIALS

5.4.1 Unless otherwise specifically stated in the Contract Documents, the CMAR shall provide and pay for all labor, materials, tools, equipment, water, light, power, heat, transportation, supervision, temporary construction services, procedures, and facilities of every nature required to properly execute and complete the Work in accordance with the Contract Documents. All materials shall be installed in strict compliance with the Contract Documents and the recommendations of the manufacturer.

5.4.2 In any case where the manufacturer's installation instructions conflict with the contract documents the CMAR shall bring such conflict to the attention of the Owner and the Architect prior to installing the associated materials or equipment, such that the Owner and the Architect may provide direction for an appropriate resolution to the identified conflict. If the CMAR proceed with installing any materials or equipment in a manner contrary to the manufacturer's instructions without first notifying the Owner and the Architect, then the CMAR shall remove and reinstall the materials or equipment in accordance with the manufacturer's instructions at no cost.

5.4.3 The CMAR shall not employ or contract with any firm or organization that is unfit or

unskilled in the work to be performed. The CMAR shall not discriminate or allow discrimination against any employee or applicant for employment because of sex, race, color, creed, or national origin. The CMAR shall comply with and shall require his/her Subcontractors to comply with all applicable provisions of NRS Title 28 (Public Works and Planning) and NRS Title 53 (Labor and Industrial Relations).

- 5.4.4 When required by the Contract Documents, the CMAR shall ensure that all employees on the Project are paid in accordance with the Prevailing Wage Rates as published in the Contract Documents and as issued by the State Labor Commissioner for the area or place of the Work. The CMAR shall forfeit, by deductive Change Order, the amounts stipulated in NRS Section 338.060, should the CMAR fail to comply with any of the applicable prevailing wage rate requirements.
- 5.4.5 The CMAR shall ensure that he and all of his/her Subcontractors comply with the reporting requirements of NRS Section 338.070.
- 5.4.6 All work performed after regular working hours, on weekends or legal holidays, shall be performed without additional expense to the Owner.
- 5.4.7 Unless otherwise specifically required, all materials and equipment incorporated in the Work shall be new, free of faults and defects, and shall conform to the Contract Documents. If required, the CMAR shall furnish evidence, satisfactory to the Owner, as to the type and quality of all materials and equipment.
- 5.4.8 No materials or equipment for the Work shall be purchased by the CMAR, nor shall the CMAR permit any Subcontractor to purchase materials or equipment, that are subject to any chattel mortgage, or are under a conditional sale contract or other security agreement by which any right, title, or interest is retained by the seller.
- 5.4.9 All materials and equipment used in the Work shall be subject to inspection and testing in accordance with accepted standards to ensure conformity with the requirements of the Contract Documents, laws, ordinances, rules and regulations, or orders of any public authority having jurisdiction. Where specific certificates concerning materials and/or equipment are required, securing payment for the prompt delivery of such certificates shall be the responsibility of the CMAR. Such certificates shall be executed by qualified firms acceptable to the Owner, shall include all information required by the Contract Documents, and shall clearly refer specifically to the relevant materials and/or equipment.

5.5 TEMPORARY UTILITIES, HEATING, AND COOLING

- 5.5.1 The CMAR shall be solely responsible for providing all necessary temporary utilities. The CMAR shall pay all costs related thereto, including, but not limited to, applications, fees, permits, engineering, and any other costs as may be required to acquire temporary utilities. The Owner will not be responsible for any delays or costs related to obtaining temporary utilities.
- 5.5.2 Temporary utilities may be connected to the Owner's existing metered utilities only with the Owner's and utility company's written authorization. Any connection to the Owner's existing utilities shall be separately metered to allow for proper allocation of

utility costs, unless another arrangement is specifically agreed to and authorized by the Owner in writing. Temporary meters shall be removed upon completion of the Work.

- 5.5.3 The CMAR shall be solely responsible for providing temporary heating, cooling, and/or ventilation as required to prevent degradation or damage to the Work. The permanent heating, cooling, and air handling systems shall not be utilized for the purpose of temporary heating, cooling, or ventilation until the Owner approves of such use in writing. In no case shall the permanent heating, cooling, or air handling systems be operated until they are complete, including formal start-up, check-out, and testing and balancing. Utilization of any of the permanent heating, cooling, or air handling systems prior to Substantial Completion shall not impact the specified warranty for such equipment which shall begin on the date of Substantial Completion in accordance with Section 3.4 of these General Conditions.

5.6 EMERGENCIES

- 5.6.1 In case of an emergency, which threatens loss or damage to property, personal injury, or life safety, the CMAR shall immediately take all feasible actions to prevent or mitigate such loss, damage, injury or death, without awaiting instructions from the Owner or the Architect. The CMAR shall notify the Owner and the Architect in writing of such emergency at the first feasible opportunity.
- 5.6.2 The amount of reimbursement claimed by the CMAR on account of any emergency action shall be determined in the manner provided herein for claims.
- 5.6.3 The CMAR shall maintain a current emergency telephone number list at the job site. The list shall include telephone numbers for the CMAR's superintendent and for other responsible CMAR representatives that can be contacted after normal working hours in the event of an emergency. This list shall be prominently posted both inside and outside of the CMAR's field office.

5.7 PROGRESS PHOTOGRAPHS

- 5.7.1 The CMAR shall take not less than twelve progress photographs of the Work each month at a minimum resolution of 640 by 480 pixels. The photographs shall be taken with the intent of providing a clear and complete depiction of overall Project progress. Each photograph is to be clearly marked with the time, date, location/view and other details sufficient to identify the subject. Camera view/locations shall be coordinated with and approved by the Owner or the Architect. Progress photos shall be stored on a digital video disk (DVD) and issued to the Owner along with each progress payment application. Other data storage formats will be acceptable to the Owner with prior approval.

5.8 TAXES, PERMITS, FEES, AND NOTICES

- 5.8.1 The CMAR shall pay all sales, consumer, use, and other taxes required by law.
- 5.8.2 The CMAR shall secure and pay for all construction-related permits, fees, and licenses necessary for the proper execution and completion of the Work, including, but not limited to, dust control permits, storm water mitigation permits, and utility tap fees. Municipal or county plan checking, building permit or permanent utility usage fees will be the

responsibility of the Owner.

5.8.3 The CMAR shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the Work. If the CMAR discovers that any of the Contract Documents are at variance therewith, he shall immediately notify the Owner and the Architect in writing. If the CMAR performs any work which he knows or should have known to be contrary to such laws, ordinances, rules, and regulations, or orders, without such written notice and written instruction from the Owner or Architect, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

5.9 PROJECT SIGN

5.9.1 Upon commencing the Work the CMAR shall erect one painted project sign, four (4) feet by eight (8) feet (4'x8'), in the format directed by the Owner. This sign shall be the only CMAR sign displayed on the Project site. The sign shall include as a minimum the Project name, the Owner, the CMAR and major sub-contractors and the project Architect(s).

5.10 ACCESS ROADS

5.10.1 The CMAR shall use designated access roads as directed by the Owner, and the CMAR shall keep these roads passable at all times. The CMAR shall be entirely responsible for any damage to roads, trees, shrubs, gates, fences, grass, curbs, gutters, and driveways due to construction usage. All damaged portions shall be restored by the CMAR, at his/her own cost, to the same condition as existed before the commencement of the Work.

5.10.2 Dirt roads shall be periodically sprinkled with water when dust conditions create an onsite or off site hazard or nuisance to workmen, neighboring properties, or the public in general. The CMAR shall secure and pay for any dust control permits required by State or local jurisdictions.

5.11 CONSTRUCTION SURVEYS

5.11.1 Unless otherwise expressly provided for in the Contract Documents, the CMAR shall furnish and pay for all construction surveys necessary for execution of the Work or required by the Contract Documents.

5.12 ARCHAEOLOGICAL FINDINGS

5.12.1 Any historic, prehistoric, archeological evidence, or artifacts discovered on the site shall remain undisturbed and shall be reported immediately to the Owner in writing. Any such findings are the property of the Owner.

5.13 SUBSURFACE CONDITIONS

5.13.1 Should the CMAR encounter subsurface or hidden conditions at the site materially differing from those indicated in the Contract Documents, he shall immediately give written notice to the Owner and the Architect of such conditions before they are disturbed. The Architect will investigate the conditions, and if he finds that they

materially differ, he will, after consultation with the Owner, make such changes in the Contract Documents as he may deem necessary. Any increase or decrease in cost resulting from such changes will be adjusted by Change Order.

5.13.2 The CMAR shall perform all work in strict conformance with the current “*Call Before You Dig*” program applicable at the location of the Project.

5.14 PATENTS AND ROYALTIES

5.14.1 To the fullest extent permitted by law, the CMAR shall defend and hold harmless the Owner and his/her officers, agents, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of claimed infringement of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Work, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents. If the CMAR uses any design, device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, that without exception, the Contract Sum includes all royalties or costs arising from the use of any such design, device, or materials in the Work.

5.15 MATERIALS TESTING

5.15.1 Testing of construction materials delivered to the job site shall be carried out by the Owner unless otherwise required in the Contract Documents. The Owner shall select the testing laboratory or inspection agency to carry out this work. The purpose of such testing is to verify conformity of materials and/or equipment with the Contract Documents. Where tests indicate conformity, costs of testing will be paid by the Owner; where tests indicate non-conformance, costs of re-testing will be paid by the CMAR by deductive Change Order.

5.15.2 If special inspection or testing requirements are established by any of the Contract Documents, performance of and payment for such inspection or testing shall be as specifically stated therein. If the manner of payment is not specified or if there is no mention of such inspection or testing in the Contract Documents, but such inspection is judged necessary by the Owner, then the Owner shall pay the cost thereof. The CMAR shall cooperate toward minimizing the cost of such inspection and testing.

5.15.3 All testing and inspection carried out by the Owner is for the benefit of the Owner and not the CMAR. Lack of performance or failure on the part of any testing laboratory or inspection agency retained by the Owner shall not relieve the CMAR of his responsibility to complete the Work in accordance with the Contract Documents.

5.16 CORRECTION OF WORK

5.16.1 If any work is covered prior to either a specified or a requested inspection, the CMAR shall uncover the work for observation and if found to be defective or non-conforming shall replace the work at no cost to the Owner.

5.16.2 If any work has been covered, which the Owner or the Architect has not specifically

requested to observe prior to being covered, the Owner may request to see such work and it shall be uncovered by the CMAR. If the uncovered work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If the uncovered work is not in accordance with the Contract Documents, the CMAR shall pay such costs.

5.16.3 The CMAR shall promptly correct all work rejected as defective or as failing to conform to the Contract Documents, whether observed before or after the Certificate of Substantial Completion is issued, and whether or not fabricated, installed, or completed. The CMAR shall bear all costs of correcting such rejected work, including, but not limited to, the cost for additional professional services.

5.16.4 The CMAR shall bear all costs associated with making good all work of separate contractors destroyed or damaged by removal or correction.

5.16.5 If the CMAR does not remove defective or non-conforming work promptly upon written notice, the Owner may remove it and may store the materials or equipment at the expense of the CMAR. If the CMAR does not pay the cost of such removal and storage promptly upon written notice, the Owner may sell such work at auction or at private sale to recover the related costs. If such proceeds do not cover all related costs incurred by the Owner the difference shall be charged to the CMAR and an appropriate Change Order shall be issued.

5.16.6 If the CMAR fails to correct defective or non-conforming work, the Owner may correct it at the CMAR's expense.

5.16.7 If the Owner prefers to accept non-conforming work, he may do so instead of requiring its removal or correction, in which case an appropriate reduction will be made to the Contract Sum, or, if the amount is determined after final payment, such amount shall be paid to the Owner by the CMAR immediately upon written notice.

5.16.8 All damage or loss to any property caused in whole or in part by the CMAR, any Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the CMAR, except damage or loss attributable to errors and/or omissions in the Contract Documents.

5.17 SUBCONTRACTORS

5.17.1 After submitting the required Subcontractor information to the Owner, the CMAR shall not contract with any other Subcontractor nor change Subcontractors without proper justification and without the prior written approval of the Owner.

5.17.2 Should the CMAR decide for any reason to substitute a subcontractor for work that he listed to be self-performed, the CMAR shall provide a written explanation of why the subcontractor was not utilized in the original list and why the substitution is in the best interest of Washoe County. The Owner reserves the right to either approve or deny such requests.

5.17.3 If the Owner has a reasonable objection to any Subcontractor, and requests in writing a

change in Subcontractors, the CMAR shall submit an acceptable substitute, and the Contract Sum may be increased or decreased by any reasonable costs directly caused by such substitution.

5.17.4 The CMAR shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the CMAR by the terms of the General Conditions and the other Contract Documents. These provisions shall include, but shall not be limited to, the following:

- A. Require that the Subcontractor's work be performed in accordance with the requirements of the Contract Documents and be guaranteed for a period of one year after the date of Substantial Completion, or as may be required in the Contract Documents.
- B. Require that the Subcontractor's work be performed in accordance with the CMAR's construction schedule to ensure completion within the Contract Time.
- C. Require that all claims by the Subcontractor for additional costs or extensions of time with respect to subcontracted portions of the Work shall be submitted to the CMAR in the time and manner provided in the Contract Documents for like claims by the CMAR upon the Owner.

5.17.5 The CMAR shall pay each Subcontractor, within ten (10) calendar days after receipt of payment from the Owner, an amount equal to the percentage of completion allowed to the CMAR on account of each Subcontractor's work. The CMAR shall also require that each Subcontractor make similar payments to each Sub-subcontractor.

5.17.6 The CMAR shall be as fully responsible to the Owner for the acts and omissions of his/her Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of the persons directly employed by him. If, through acts or neglect on the part of the CMAR, any Subcontractor suffers loss or damage, the CMAR agrees to settle with such Subcontractor. If such Subcontractor asserts any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the CMAR, who shall indemnify, hold harmless, and defend the Owner against any such claim.

5.17.7 If the CMAR fails to make appropriate payments to any Subcontractor, workman, or supplier, then the Owner may pay unpaid bills and/or withhold from the CMAR's unpaid compensation a sum of money deemed reasonably sufficient to reimburse the Owner or pay any and all such claims until satisfactory evidence is furnished that all such liabilities have been fully discharged by the CMAR, but in no event shall the provisions of this paragraph be construed to impose any obligations upon the Owner to the CMAR, his/her Surety, Subcontractors, workmen, or suppliers. In paying any unpaid bills of the CMAR, the Owner shall be deemed the agent of the CMAR, and any payment so made by the Owner, shall be considered as a payment made under the Contract by the Owner to the CMAR, and the Owner shall not be liable to the CMAR for any such payment made in good faith.

5.17.8 The CMAR shall be responsible for the proper distribution of all insurance recoveries resulting from an insured loss under the Contract.

- 5.17.9 The Owner may furnish to a subcontractor or supplier, information regarding payments to the CMAR on account of work done by such subcontractor or supplier, if requested.
- 5.17.10 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any monies to any Subcontractor, workman, or supplier, except as may otherwise be required by law.
- 5.17.11 Prior to receiving or accepting any payment, each subcontractor must have a valid Nevada business license, pursuant to 2013 Legislative Session Senate Bill 404.

5.18 JOB SAFETY

- 5.18.1 The CMAR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- 5.18.2 All work shall be performed in strict accordance with the most current edition of the State of Nevada Occupational Safety and Health Standards.
- 5.18.3 The CMAR shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to:
- A. All employees on the Project and all other persons who may be affected thereby;
 - B. All of the Work, whether in storage on or off the site; and
 - C. All property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.
- 5.18.4 The CMAR shall comply with all applicable laws, ordinances, rules, and regulations of any public authority having jurisdiction for the safety of persons or property, or to protect them from damage, injury, or loss. The CMAR shall erect and maintain, as required by existing conditions and by the progress of the Work, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating regulations, and notifying owners and users of adjacent properties.
- 5.18.5 The CMAR shall designate a responsible member of his/her organization at the site whose duty shall be supervision of a safety program and the prevention of accidents. This person shall be the CMAR's superintendent unless otherwise designated in writing by the CMAR to the Owner. In any emergency affecting the safety of persons or property, the CMAR shall act, at his/her discretion, to prevent threatened damage, injury, or loss.
- 5.18.6 The CMAR shall be responsible for the safe operation of all equipment, for utilizing safe construction methods, and for any damage which may result from failure or from improper construction, maintenance, or operation.
- 5.18.6 The CMAR shall securely fence, barricade, cover, or otherwise adequately protect all excavations, holes, shafts, or other hazards to guard against danger to persons or animals and shall properly maintain such protection until the completion of the Project.

5.18.7 The CMAR shall immediately notify the Owner, and shall take immediate action to prevent damage, injury or loss, should any suspected hazardous materials be encountered during the course of work on the Project.

5.19 SITE MANAGEMENT AND CLEANUP PROCEDURES

5.19.1 The CMAR shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the site. The CMAR shall at all times keep the site and the Work free from accumulation of waste materials and rubbish resulting from his/her operations.

5.19.2 The CMAR shall obtain any required dust control permit and shall implement a dust control program prior to beginning any activity at the project site. The CMAR's dust control program shall comply with all applicable state and local requirements. As a minimum, the CMAR shall periodically sprinkle the entire construction site with water as required to prevent blowing dust from becoming a hazard or nuisance to workmen, neighboring properties, or the public.

5.19.3 The CMAR shall implement the stormwater pollution prevention plan complying with the most current version of the federal Environmental Protection Agency Construction General Permit, or with applicable state or local stormwater pollution prevention requirements, whichever is more stringent. The CMAR shall obtain the permit from the State, identifying the County as the Owner.

5.19.4 Upon completion of the Work the CMAR shall remove all waste materials, rubbish, tools, construction equipment and machinery, and surplus materials from the Project site. The CMAR shall clean all surfaces and leave the Work in a finished, cleaned, washed, waxed, and polished condition as standard and typical and as the surfaces are required for operation and use. The aforementioned cleanup requirements are also specifically applicable to all mechanical equipment and to all mechanical equipment rooms.

5.20 ROOFING INSTALLATION AND PROTECTION

5.20.1 No work including staging or access to other portions of the Work shall be permitted on the finished membrane.

5.20.2 All roofing work shall commence at the furthest point from the workers' access and progress back towards the access point.

5.20.3 If staging, access, or work is required on the finished membrane, the CMAR shall provide protection along the access path and under the work extending forty-eight inches (48") beyond the required work area. Protection shall consist of three-quarter inch (3/4") plywood over a heavy canvas tarp with sand bag ballasts as required to prevent the plywood from becoming airborne during strong winds.

5.21 QUALITY ASSURANCE/QUALITY CONTROL

5.21.1 The CMAR shall develop and implement an appropriate quality assurance/quality control program for the Project. A detailed description of the program shall be furnished to the

Owner and the Architect for review prior to submitting the first progress payment application.

5.22 DRUG AND ALCOHOL POLICY

5.22.1 In order to be eligible to perform work on Washoe County construction projects all contractors who will work on such projects must have in existence a Drug and Alcohol Policy. This requirement is a reasonable precaution to ensure a safe and drug-free environment on Washoe County construction projects as they may involve workers being in relatively close contact with students.

5.22.2 All contractors who perform work on Washoe County projects, regardless of tier, shall have in place a Drug and Alcohol Policy applicable to all workers who will be employed on those projects. The Policy must meet the minimum requirements of the Washoe County. Each contractor shall demonstrate compliance with this provision by submitting a certification under penalty of perjury that the Policy is in place, that it will be actively enforced, and that all workers who will be employed on Washoe County projects will have undergone the pre-placement drug testing required by Washoe County. Washoe County and/or the general contractor is empowered to review contractor records of enforcement of its Drug and Alcohol Policy at any time during the period following award of the contract up to and including completion of the project in order to determine whether the policy is in fact being enforced. The contractor shall forthwith deliver to Washoe County any and all records requested to determine compliance with this Drug and Alcohol Policy requirement. Failure to maintain or rigorously enforce the policy or to timely respond to Washoe County demands for production of records relating to the Drug and Alcohol Policy may result in termination of the project contract at no cost to the Washoe County.

SECTION 6 THE ARCHITECT

6.1 ARCHITECT'S RESPONSIBILITIES

- 6.1.1 The Architect is the Owner's representative and will advise and consult with the Owner for the duration of the Project.
- 6.1.2 The Architect(s) will be the interpreter(s) of the Drawings and Specifications and will render interpretations as may be necessary for proper execution of the Work.
- 6.1.3 The Architect will review and respond through the Owner to all Requests for Information issued by the CMAR within the time period stipulated in Section 2.3.
- 6.1.4 The Owner, Owners Representative(s), and Architect(s) shall have complete access to the Work at all times.
- 6.1.5 The Architect will make periodic visits to the site to observe the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents.
- 6.1.6 The Architect will review all shop drawings, samples, and submittals required by the Contract Documents.

- 6.1.7 The Architect will not be responsible for the acts or omissions of the CMAR or any Subcontractor, or any of his or their agents or employees, or any other persons performing any of the Work.
- 6.1.8 Based upon site observations and the CMAR's progress payment applications, the Architect will review and make recommendations to the Owner, regarding the amounts claimed by the CMAR in each progress payment application.
- 6.1.9 The Architect will have authority to reject work which does not conform to the Contract Documents.
- 6.1.10 The Architect will prepare Change Orders and Construction Change Directives for review and approval by the Owner.
- 6.1.11 The Architect will have authority to order minor changes in the Work that do not involve a change in the Contract Sum or the Contract Time.
- 6.1.12 The Architect shall attend and participate in all scheduled construction progress meetings at the Project site.
- 6.1.13 The Architect's decisions on matters relating to aesthetics will reviewed and approved by the Owner and will be considered final if consistent with the intent expressed in the Contract Documents.

SECTION 7: INSURANCE AND BONDING

7.1 GENERAL REQUIREMENTS

- 7.1.1 Without limiting any of the other obligations or liabilities of the CMAR, the CMAR shall, at his/her sole expense, procure, maintain, and keep in force not less than the following amounts, types and coverages of insurance conforming to the minimum requirements set forth in this Section, unless otherwise agreed to by the Owner in writing. The required insurance coverage shall be procured before any work commences on the Project and shall be maintained continuously in force at all times. If the CMAR fails to comply with this Section, the CMAR shall be considered in default of the Contract if so determined by the Owner.
- 7.1.2 Without limiting any of the other obligations or liabilities of the CMAR, the CMAR shall, at the CMAR's sole expense, cause each Subcontractor and each Sub-subcontractor involved with the work of construction under the direction and control of the CMAR for this contract, to procure, maintain and keep continuously in force insurance types and limits to conform to the minimum requirements set forth in this section, unless otherwise agreed to beforehand by the Owner in writing. The required insurance coverage shall be procured before any work commences on the Project and shall be maintained continuously in force at all times. The required limits of insurance for Subcontractors shall be a minimum of \$2,000,000 or the amount customarily carried by the Subcontractor, whichever is greater, combined single limit per occurrence for bodily injury, personal injury and property damage. If the CMAR fails to comply with this Section, the CMAR shall be considered to be in default of the Contract if so determined by the Owner.

- 7.1.3 Unless specified herein or otherwise agreed to by the Owner, the required insurance shall be in effect prior to the commencement of work by the CMAR and shall continue in force until the latter of the following three conditions:
- A. Final acceptance by the Owner of the completed Work and acceptance of final payment by the CMAR;
 - B. At such time that the insurance is no longer required by the Owner under the terms of the Contract Documents;
 - C. The expiration of any applicable law (including any Statute of Repose), by which any party may bring a claim against Owner.
- 7.1.4 As evidence of compliance with the insurance required by Section 7 (Insurance and Bonding), the CMAR shall furnish the Owner with all certificates of insurance (Acord Form 25 or equivalent form approved by the Owner) prior to the award of the contract. The CMAR shall maintain original copies of Subcontractor insurance certificates for the duration of the Project and through the warranty period. Such records shall be furnished to the Owner upon request. The certificates for each insurance policy shall be signed by a person authorized by the insured's agent or broker. All certificates along with the required endorsements shall be received and approved by the Owner before any work commences. The Owner's project number, project location and project description shall be noted on each certificate of insurance. An additional certificate evidencing continuation of CGL liability coverage for completed operations shall be submitted with the final payment and thereafter upon renewal or replacement of such coverage until the expiration of the time required by the Owner under the terms of the Contract Documents. Upon Owners written request, information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CMAR with reasonable promptness.
- 7.1.5 The Owner reserves the right to require and obtain complete, certified copies of any insurance policies required by the Contract Documents at any time. Complete copies of policies shall be furnished by the CMAR and by any Subcontractor or Sub-subcontractor within thirty (30) days after a written request is issued by the Owner. In lieu of a required certificate of insurance the CMAR may furnish an original binder signed by an authorized representative of the insurer(s) for a maximum of sixty (60) days from the date of inception of the associated policy(ies). Said certificates of insurance or original binder must include the CGL Additional Insured Endorsement as required in Section 7.3.4.
- 7.1.6 With respect only to the bonds required by Section 7.6 (Performance and Payment Bonds), the CMAR shall furnish the Owner with properly executed bonds on forms acceptable to the Owner and shall have affixed to each bond a certified copy of a current power of attorney of the attorney-in-fact who executed the bond on behalf of the surety.
- 7.1.7 Except as provided below, insurance coverages shall not be suspended, cancelled, non-renewed or reduced in limits by either the CMAR or by the insurer, except after forty-five (45) days prior written notice by certified mail, return receipt requested, has been given by the CMAR or its insurer to Owner. Insurance certificates shall include confirmation stating that forty-five (45) days prior written notice will be given by the insured's agent/broker to the certificate holder if cancellation is to be before the expiration date set

forth in the certificate.

- 7.1.8 Cancellation by the insurer for non-payment of premium requires that the insurer gives the CMAR notice of cancellation ten (10) calendar days before the effective date of the cancellation and the CMAR shall notify Owner immediately upon receipt of the notice.
- 7.1.9 Insurers or sureties shall have and maintain throughout the period for which coverage is required, an A.M. Best Company Rating of "A-" or better and an A.M. Best Company Financial Size Category of "X" or better, unless specifically waived by the Owner.
- 7.1.10 Insurers or sureties providing the insurance or providing the bonds required by this Contract must be either:
- A. Authorized by certificates of authority issued by the Department of Insurance of the State of Nevada; or
 - B. With respect only to the coverage required by Section 7.2 (Workers Compensation), be authorized as a self-insurer under NRS Section 616.291.
- 7.1.11 The insurance provided by the CMAR and his/her Subcontractors pursuant to this Contract shall apply on a primary basis and any other insurance or self-insurance maintained by the Owner shall be in excess of and not contributing to the insurance provided by or on behalf of the CMAR. Coverage maintained by the CMAR or his/her Subcontractors shall apply first, before any other insurance, on a primary basis, and without application of a deductible or self-insured retention unless otherwise specifically agreed to by the Owner. Such approval shall not relieve the CMAR from payment of any deductible or self-insured retention owed on CMAR's insurance.
- 7.1.12 The Owner and the Architect shall be named as additional insured on all insurance provided by the CMAR and his/her Subcontractors as required in Section 7.3.4 (except for Workers Compensation insurance). The Workers Compensation policy shall provide a Waiver of Subrogation endorsement as required in Section 7.2.1.
- 7.1.13 Failure to maintain the required insurance or surety requirements may result in termination of this contract at Owner's option. If CMAR or its Subcontractors fails to maintain insurance as set forth herein, Owner shall have the right, but not the obligation, to purchase said insurance or bond at CMAR's and/or Subcontractor's expense.
- 7.1.14 By requiring insurance herein, Owner does not represent that coverage and limits will necessarily be adequate to protect Owner and such coverage and limits shall not be deemed as a limitation on CMAR's or Subcontractor's liability under the indemnities granted to Owner in this contract.

7.2 WORKERS COMPENSATION

- 7.2.1 The CMAR's Workers Compensation insurance shall comply with all statutory requirements of the State of Nevada. The CMAR's insurance or authorized self-insurance shall cover the CMAR, and to the extent not otherwise insured, his/her Subcontractors of every tier for those sources of liability which would be covered by the standard Workers Compensation Policy as prescribed in NRS Chapter 616 and Employers Liability

coverage without restrictive endorsements. Each policy shall contain a Waiver of Subrogation against the Owner. In addition, where appropriate, coverage shall be included for any other applicable federal or state law, including but not limited to, the Longshore and Harbor Workers Compensation Act, Maritime including Jones Act, and Federal Employers Liability Act.

- 7.2.2 Subject to the restrictions of coverage found in the Nevada Industrial Insurance Act (NRS Chapter 616), there shall be no maximum limit on the amount of coverage for liability imposed by this Act, the Longshore and Harbor Workers Compensation Act, or any other coverage customarily insured under Part One of a standard Workers Compensation Policy. The minimum amount of coverage for those coverages insured under Part Two of the Standard Workers Compensation Policy (inclusive of any amounts provided by an umbrella or excess policy) shall be those amounts stated under Subsection 7.2 (Required Limits of Insurance). If self-insured, such insurance must be approved by Owner.

7.3 COMMERCIAL GENERAL LIABILITY

- 7.3.1 The CMAR shall carry and maintain a Commercial General Liability Policy and, if necessary, Commercial Umbrella insurance, provided on a form at least as broad as the Insurance Service Office (ISO) CG 0001 12 04 occurrence form and shall cover all operations, activities and exposures of the CMAR including, but not limited to, the following:

- A. Premises and Operations Liability;
- B. Products and Completed Operations Liability;
- C. Personal and Advertising Injury;
- D. Contractual Liability insuring the obligations assumed by the CMAR in this Agreement;
- E. Liability which the CMAR may incur as a result of the operations, acts, or omissions of his subcontractors, independent contractors, suppliers, their agents or employees;
- F. "Claims Made" or "Modified Occurrence" coverage forms may not be used and are not acceptable (except for professional liability insurance);
- G. Defense costs and expenses shall not reduce the limits of insurance and shall not apply within any aggregate limit of insurance unless approved by the Owner; and
- H. CMAR shall maintain electronic data liability insurance applicable to the Project and insuring against liability arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data. This coverage shall be maintained with a limit of liability of not less than \$1,000,000.

- 7.3.2 The CMAR shall maintain per project coverage with separate limits of coverage applicable only to the work performed under the Contract. The minimum limits to be maintained by the CMAR (inclusive of any amounts provided by an umbrella or excess

policy) shall be those that would be provided with the attachment of ISO endorsement Amendment of Limits of Insurance (Designated Project or Premises) to a Commercial General Liability Policy with the minimum amounts stated under Section 7.8 (Required Limits of Insurance).

- 7.3.3 The CMAR shall continue to maintain the required Commercial General Liability coverage along with Products/Completed Operations coverage for the applicable statute of repose or any applicable law after the date that the Certificate of Substantial Completion is issued. The minimum limits to be maintained by the CMAR (inclusive of any amounts provided by an umbrella or excess policy) shall be the amounts stated under Section 7.8 (Required Limits of Insurance).
- 7.3.4 Additional Insured status and coverage to Owner, Owner's officers, and employees shall be included in accordance with an endorsement attached to the policy and under the commercial umbrella, if any, providing coverage at least as broad as the unmodified ISO CG 2010 11/85 endorsement. The CMAR shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner and the Architect as additional insureds for claims caused in whole or in part by the CMAR's negligent acts or omissions during the CMAR's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the CMAR's negligent acts or omissions during the CMAR's completed operations.
- 7.3.5 The endorsement shall name and list Owner, Owner's officers, and employees as insureds under the CGL and shall apply until the applicable state statute of repose has expired for potential defective workmanship.
- 7.3.6 This additional insured coverage shall apply on a primary basis and be "non-contributory" with respect to any other valid and applicable insurance, self-insurance or deductible afforded to Owner.

7.4 BUSINESS AUTO LIABILITY INSURANCE

- 7.4.1 The CMAR's insurance shall cover the CMAR liability arising out of any auto and be written on any of the Unmodified forms at least as broad as the ISO CA 0001, CA 00 055, CA 00 12, CA 00 20). The form shall include coverage for owned, non-owned, and hired autos used by the subcontractor, its employees, agents or representatives. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
- 7.4.2 The minimum limits to be maintained by the CMAR (inclusive of any amounts provided by an umbrella or excess policy) shall be the amounts stated under Section 7.8 (Required Limits of Insurance).
- 7.4.3 Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

7.5 PROPERTY INSURANCE

- 7.5.1 The CMAR will provide Boiler & Machinery insurance coverage with replacement cost endorsement with a minimum limit of twenty-five percent (25%) of the bid value unless such project is for the installation of fired equipment wherein the limit shall be one hundred percent (100%) of bid. The CMAR may be released from this responsibility by the Owner through written confirmation. The “connected and ready for use” requirement, underground property exclusion or any similar limitation shall be excluded. Such coverage may be incorporated as part of the “All Risk” Builders Risk insurance policy through the elimination of exclusions for mechanical and electrical breakdown as well as the addition of coverage for damage stemming from change in temperature to machinery or equipment.
- 7.5.2 Property insurance shall be on an “All Risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect’s and CMAR’s services and expenses required as a result of such insured loss.
- 7.5.3 There shall be no exclusion in the Builders Risk or Boiler & Machinery policy for any loss caused by or resulting from workmanship, construction, materials, specifications or design defect. Nor shall there be any other exclusion in the policy which the Owner, in its sole discretion, finds unacceptable.
- 7.5.4 If the Contract includes both construction of or additions to buildings or structures and the installation of machinery or equipment, Builders Risk insurance shall include coverage during transit, interim off-site storage and during post-installation testing. If the Contract is solely for the purpose of installation of machinery or equipment in existing buildings or structures, the CMAR shall provide an all risk Installation Floater including coverage during transit, interim off-site storage and during post-installation testing.
- 7.5.5 For Builders Risk the amount of insurance is to be one hundred percent (100%) replacement cost plus an additional fifteen (15%) for debris removal of the completed value including foundations of the entire addition(s), building(s) or structure(s). In the event that such Builders Risk coverage includes debris removal in excess of the policy limit, the limit shall not require the additional amount for debris removal. In the case of a remodel or renovation project, the policy limit shall be the greater of the project amount or \$500,000. The extra expense sublimit shall be the greater of twenty percent (20%) of the policy limit or \$1,000,000.
- 7.5.6 The amount of insurance for an Installation Floater shall be one hundred percent (100%) of the installed replacement cost value, and valuation shall be replacement cost.
- 7.5.7 The Builders Risk Policy or the Installation Floater must not be subject to any limitation or exclusion of coverage because of occupancy of the building(s), addition(s) or structure(s) in the course of construction or the putting to use of the machinery or equipment. The policy must be endorsed to provide that, subject to the notice of cancellation requirement, coverage will continue to apply until the Certificate of Substantial Completion is issued by the Owner for the building(s), building addition(s) or

structure(s), or the machinery or equipment.

7.5.8 The Owner reserves the right to require the CMAR to provide other forms of property insurance if so determined by the Owner.

7.5.9 Any policy or policies shall name the Owner as Sole Loss Payee. The CMAR shall comply with all warranties required by the insurer. Any deductible shall be the responsibility of the CMAR.

7.6 PERFORMANCE AND PAYMENT BONDS

7.6.1 Performance and Payment Bonds are required for all contracts in excess of \$100,000 (per NRS Section 339.025). Upon notification to the bidder of the acceptance of the bid, the successful bidder shall immediately cause to be executed all required Performance and Payment Bonds (including those required for Subcontractors) in a form acceptable to the Owner for one hundred percent (100%) of the Contract Sum. The Performance and Payment Bonds shall be furnished no later than fifteen (15) calendar days after the Contract is awarded.

7.6.2 The Owner reserves the right to require the CMAR to obtain Performance and Payment Bonds for any Subcontractor, each in the amount of one hundred percent (100%) of the Subcontractor's bid. The Owner will pay the actual cost of any bond so required, not including any overhead and profit. If said bonds cannot be obtained within sixty (60) calendar days of notification, the Subcontractor shall be replaced at no additional cost to the Owner.

7.6.3 The Owner will not require the CMAR to increase the Performance and Payment Bonds to accommodate Change Orders. The Owner will not pay additional costs for increased bond fees resulting from Change Orders.

7.7 REQUIRED LIMITS OF INSURANCE

7.7.1 The minimum amounts of insurance (inclusive of any amounts provided by an umbrella or excess policy) shall be as follows:

7.7.2 Commercial General Liability

Minimum limits for all contract amounts are to be applicable only to work performed under this contract and shall be those that would be provided with the attachment of the Amendment of Limits (Designated Project or Premises) endorsement. General Liability: \$10,000,000 minimum or the amount customarily carried by CMAR, whichever is greater, combined single limit per occurrence for bodily injury, personal injury and property damage with an endorsement that shows the \$10,000,000 limit applies solely to this project. General Liability coverage shall specifically apply to the acts and/or omissions of CMAR and its subcontractors. Moreover, the above General Liability coverage shall be maintained in full force and effect for five (5) years from the completion of the project, and shall solely apply to this project.

- Products/Completed Operations Aggregate \$10,000,000
- Personal and Advertising Injury \$10,000,000
- Each Occurrence \$10,000,000

- Fire Damage (Any One Fire) \$NIL
- Medical Expense (Any One Person) \$NIL

7.7.3 Workers Compensation/Employers Liability

Obtain statutory limits of Workers Compensation/Employers Liability insurance for employees engaged on or at the site of the project in accordance with Chapters 616A to 616D, inclusive, and 617 of NRS. Employers Liability must be maintained for a minimum of \$1,000,000 in limits. If an excess policy is utilized, the policy will provide excess coverage for Employers' Liability.

7.7.4 Commercial Automobile Liability

Automobile Liability is \$2,000,000 minimum or the amount customarily carried by the contractor, whichever is greater, combined single limit per accident for bodily injury and property damage. No aggregate limits may apply. Non-owned and hired automobile liability must be included.

7.7.5 Pollution Liability

CMAR shall maintain in force for the full period of this contract insurance covering losses caused by pollution incidents that arise from the operations of the CMAR described under the scope of services of this contract. Insurance shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy of insurance affording these required coverages shall be written in an amount of at least \$1,000,000 per claim, with an annual aggregate of at least \$2,000,000. Owner, its officers and employees shall be included as an insured.

If coverage as required is written on a claims-made basis, the CMAR warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised through the statute of repose beginning from the time that work under the contract is completed. If the scope of services as defined in this contract includes the disposal of any hazardous or nonhazardous materials from the job site, the CMAR must furnish to the Owner evidence of pollution liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this contract. Coverage certified to the Owner under this paragraph 8.8.6 must be maintained in minimum amounts of \$1,000,000 per loss, with an annual aggregate of at least \$2,000,000.